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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 198.

LAUREL OIL AND GAS COMPANY, APPELLANT,

vs.

ROBERT W. MORRISON, CHARLES W. S. COBB, JOHN E. McKINNEY, ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED OCTOBER 31, 1907.

(20,896.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 493.

LAUREL OIL AND GAS COMPANY, APPELLANT,

vs.

ROBERT W. MORRISON, CHARLES W. S. COBB, JOHN E. McKINNEY, ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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a Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the May Term, 1907, of said Court, begun and held at the United States Court House in the City of St. Paul, Minnesota, on the first Monday in May, to-wit: the sixth day of May, A. D. 1907, before the Honorable Walter H. Sanborn and the Honorable William C. Hook, Circuit Judges, and the Honorable John F. Philips, District Judge.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest:

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it Remembered that heretofore, to-wit: on the seventeenth day of December, A. D. 1906, a transcript of record, pursuant to an appeal allowed by the United States Court of Appeals in the Indian Territory, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein Robert W. Morrison, *et al.* were Appellants, and Bates B. Burnette, Curator of the estates of Edith Durant and Edna Durant, Minors, *et al.*, were Appellees, which said transcript of record is in the words and figures following, to-wit:

1 The United States of America to Bates B. Burnette, Curator of the Estates of Edith Durant and Edna Durant, minors; The Galbreath Oil & Gas Company, and The Laurel Oil & Gas Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this Citation bears date, pursuant to an Order of Appeal, filed in the Clerk's office of the United States Court of Appeals in the Indian Territory, wherein, in the matter of the Guardianship of Edith and Edna Durant, minors, Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene, are Appellants, and you are Appellees, to show cause, if any there be, why the decree rendered against the said Appellants, as in said Order of Appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable William H. H. Clayton, Associate Justice of the United States Court of Appeals in the Indian Territory, this 26th day of November, in the year of our Lord one thousand nine hundred and six (1906).

WM. H. H. CLAYTON,
Associate Justice of the United States Court of Appeals in the Indian Territory.

Service of the within citation accepted this 26th day of November, 1906.

P. C. WEST,
P. L. SOPER,
J. H. HUCKLEBERRY,
THOS. H. OWEN,
Attorneys for Bates B. Burnett & Galbreath Oil & Gas Co.
WILLIAM T. HUTCHINGS,
GEO. A. MURPHY AND
WM. P. Z. GERMAN,
Att'ys for Laurel Oil & Gas Co.
BATES B. BURNETT,
Curator for Edith Durant and Edna Durant.

2 No. —. United States Circuit Court of Appeals, Eighth Circuit. In the matter of the Guardianship of Edith and Edna Durant, minors, Robert W. Morrison, *et al.*, Appellants, *vs.* Bates B. Burnett, Curator, *et al.*, Appellees. Citation on Order of Appeal.

UNITED STATES OF AMERICA, *Indian Territory:*

In the Court of Appeals, *set.*

Pleas and proceedings in the United States Court of Appeals in the Indian Territory, at a term begun and held at the Court House in the City of South McAlester, Indian Territory, on the 23rd day of November, A. D. 1906.

Present and presiding: Hon. Joseph A. Gill, Chief Justice, Hon. Wm. H. H. Clayton, Associate Justice, Hon. Hosea Townsend, Associate Justice, Hon. William R. Lawrence, Associate Justice, George K. Pritchard, U. S. Marshal, and Wm. P. Freeman, Clerk.

In re Guardianship of EDITH and EDNA DURANT, Minors, R. W. MORRISON ET AL., Appellants. No. 806.

Be it remembered, that heretofore, to-wit, on the 21st day of November, A. D., 1906, there was filed in the office of the Clerk of the United States Court of Appeals in the Indian Territory, at South McAlester, a transcript of the record and proceedings of the United States Court for the Western District of the Indian Territory, sitting at Sapulpa, in the above entitled cause, which is in the words and figures following, to-wit:

The United States of America to Bates B. Burnett, Curator of the estate of Edith Durant and Edna Durant, minors, The Galbraith Oil and Gas Company, and the Laurel Oil and Gas Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Court of Appeals in the Indian Territory, at the

City of South McAlester, Indian Territory, sixty days from and after the day this citation bears date, pursuant to an appeal filed in the Clerk's Office of the United States Court of Appeals in the Indian Territory, wherein Robert W. Morrison *et al.*, are appellants and in which Bates B. Burnett, Curator of the estate of Edith and Edna Durant, minors, The Galbraith Oil and Gas Company and the Laurel Oil and Gas Company are appellees to show cause, if any there be, why the decree entered of record by the Honorable Louis Sulzbacher on June 13, 1906, in the guardianship of the said above
3 named minors, in which decree said court set aside an order and decree confirming certain oil and gas leases in the appellants as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable William R. Lawrence, Judge of the United States Court of Appeals in the Indian Territory, this 19th day of November in the year of our Lord One Thousand Nine Hundred and Six.

WILLIAM R. LAWRENCE,
Justice of the United States Court of Appeals in the Indian Territory.

Notice of the above citation is hereby accepted this 19th day of November, A. D. 1906.

GALBRAITH OIL & GAS CO.,
By PRESTON C. WEST, *Att'y.*
SOPER, HUCKLEBERRY & OWEN, *Attorneys.*
HUTCHINGS, MURPHY & GERMAN, [*Att'y*].

Endorsed: Citation.

4 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judge of the United States Court for the Western District of the Indian Territory, sitting at Sapulpa, Greeting:

Because, in the records and proceedings, as also in the rendition of the [-udgment] of a plea which is in the said United States Court before you, at the May term, 1903, thereof, between In the Matter of the Guardianship of and the leasing of the lands of Edna Durant and Edith Durant minors, for oil and gas to Robert W. Morrison *et al.*, and the setting aside of an order confirming certain oil and gas leases on the lands of the said minors to the said Morrison and others a manifest error hath happened, to the great damage of the said Robert W. Morison *et al.*, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Court of Appeals, in the Indian Territory, together with this writ, so that you have the said record and proceedings

aforesaid, at the City of South McAlester, Indian Territory, and filed in the office of the Clerk of the United States Court of Appeals, in the Indian Territory, on or before the first day of August, 1906, to the end that the record and proceedings aforesaid being inspected, the United States Court of Appeals in the Indian Territory, may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 20th day of July, in the year of our Lord one thousand nine hundred and six.

Issued at office in the City of South McAlester, Indian Territory, with the seal of the United States Court of Appeals in the Indian Territory hereto affixed the date last above written.

WM. P. FREEMAN,
Clerk United States Court of Appeals in the Indian Territory.

Allowed by:
[SEAL.] WILLIAM R. LAWRENCE, *Judge.*

5 *Return to Writ.*

UNITED STATES OF AMERICA,
Indian Territory, Western District, ss:

In obedience to the command of the within writ, I herewith transmit to the United States Court of Appeals for the Indian Territory, a duly certified transcript of the record and proceeding in the within entitled case, with all things concerning the same.

In Witness Whereof, I hereto subscribe my name, and affix the seal of said Court at office in the City of Muskogee, this 30th day of July, A. D. 1906.

[SEAL.] R. P. HARRISON,
Clerk of the United States Court for the Western District of Indian Territory.

The United States of America to Galbreath Oil and Gas Company, Laurel Oil and Gas Company, and Monday Durant, Guardian of Edna Durant and Edith Durant, Minors, Greeting:

You are hereby cited and admonished to be and appear in the United States Court of Appeals in the Indian Territory, at the City of South McAlester, Indian Territory, twenty days from and after the day this Citation bears date, pursuant to a writ of error, filed in the Clerk's office of the United States Court for the Western District of the Indian Territory, at Sapulpa, wherein Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene are appellants and you are appellees to show cause, if any there be, why the order setting aside order confirming leases rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, The Honorable William R. Lawrence, Justice of the United States Court of Appeals in the Indian Territory, this 24th day of July, in the year of our Lord one thousand nine hundred and six.

WILLIAM R. LAWRENCE,
Justice of the United States Court of Appeals in Indian Territory.

Service of this citation accepted this 27th day of July, 1906

6 MARS & MARS,
Att'ys of Record for Galbreath Oil & Gas Company, of Tulsa, I. T.,
Per F. L. MARS.
LAUREL OIL & GAS CO.,
By HUTCHINGS, MURPHY & GUMM.

Service accepted August 1st, 1906.

MONDAY DURANT,
Guardian of Edith Durant and Edna Durant, Minors.

United States Court of Appeals in the Indian Territory.

774.

[*In re*] Guardianship of EDITH and EDNA DURANT, Minors,
vs.
ROBERT W. MORRISON ET AL., Appellants.

Citation on Writ of Error.

[Uleas] before Honorable Louis Sulzbacher, Judge of the United States Court for the Western District of the Indian Territory, sitting at Sapulpa, Indian Territory, on the 14th day of June, 1906.

No. 260.

In the Matter of EDITH and EDNA DURANT, Minors, MONDAY DURANT, Guardian.

Probate.

On the 7th day of December, 1905, petitioner, Monday Durant, files petition and bond herein for appointment of guardian and petition for leave to lease lands of Edith and Edna Durant, minors, which are in words and figures as follows:

Petition for Appointment of Guardian.

UNITED STATES OF AMERICA, *Indian Territory, ss:*

In the United States Court, Western District, Sapulpa.

To the Honorable Louis Sulzbacher, Judge of the United States Court:

Your petitioner, Monday Durant, respectfully represents unto your Honor

That Edith Durant is a minor, aged six years, on the Freedman Roll and a citizen of the Creek (Muskogee) Nation or Tribe of Indians.

That Edna Durant is a minor aged six years, [on the] Freedman Roll and a citizen of the Creek (Muskogee) Nation or Tribe of Indians.

7 That Monday Durant is the father of said minors, Edith and Edna Durant; that he is fifty-five years old, on the Freedman Roll and a citizen of the Creek (Muskogee) Nation Tribe of Indians and that said minors are living with their father and mother located four miles northwest of Boynton, Western District, I. T.

That the said minors, Edith and Edna Durant, have no legal guardian.

That the minor, Edith Durant, has the following property, to-wit: North one-half (½) of the southeast quarter (¼) of section three (3), and the east one-half (½) of the northwest quarter (¼) of section fifteen (15), township seventeen (17) north, range twelve, (12) east, Creek Nation, I. T.—160 acres more or less [according] to the Government survey thereof.

That the minor, Edna Durant has the following property, to-wit: The northeast quarter (¼) of section eleven (11) township seventeen (17) range twelve (12) east, Creek Nation, I. T.,—160 acres more or less according to the Government survey thereof.

Guardian's Bond.

UNITED STATES OF AMERICA,
Indian Territory, Western District, ss:

Know all men by these presents, that we, Monday Durant, as principal, and Micco Behen, George Brown, Fred S. Lozier and Pink W. Watson, as sureties, are held and firmly bound unto the United States of America in the penal sum of One Thousand ($1000.00) Dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators firmly by these presents.

Signed with our hands and sealed with our seals this 9th day of December, A. D. 1905.

The condition of this obligation is such, that whereas the said Monday Durant was, on the 9th day of December, A. D. 1905,

appointed by the United States Court in Probate, in and for the said Western District of the Indian Territory, Guardian of Edna Durant, aged six (6) years and Edith Durant, aged six (6) years, minor children of Monday and Gussie Durant, under the age of 14 years. Now, if the said Monday Durant, his heirs, executors or administrators, upon the determination or ceasing of such guardianship, shall deliver and pay to the said minors, their executors or administrators, or any guardians that may be appointed for them
8 after the determination or ceasing of the guardianship of said Monday Durant, all moneys, property and effects belonging to said minors, in the possession or under the control of the said guardian, and that shall be due to said minors from the guardian, and if the said guardian shall in all things faithfully perform and fulfill his duty as guardian aforesaid, then this obligation shall be void and of no effect; otherwise to be and remain in full force and virtue.

MONDAY DURANT, [SEAL.]
P. O. Address, Lee, Ind. Ter.
MICCO BEHEN, [SEAL.]
Sapulpa, Ind. Ter.
GEORGE BROWN, [SEAL.]
P. O. Address, Lee, Ind. Ter.
FRED S. LOZIER, [SEAL.]
P. O. Address, Sapulpa, Ind. Ter.
PINK W. WATSON, [SEAL.]
P. O. Address, Sapulpa, Ind. Ter.

UNITED STATES OF AMERICA.
Indian Territory, Western District, ss:

We, the undersigned, principal and sureties on the within Guardian's Bond, do each of us solemnly swear that we are worth over and above our indebtedness and all liabilities and exemptions the respective amounts set opposite our names, and that our property is within the Indian Territory, and all personally well known to me

MONDAY DURANT,	$1000.00
MICCO BEHEN,	$ 500.00
GEORGE BROWN,	$ 500.00
FRED S. LOZIER,	$ 500.00
PINK W. WATSON,	$ 500.00

Subscribed and sworn to before me this 9th day of December, A. D. 1905.

F. L. MARS,
Notary Public.

[SEAL.]

My commission expires July 11, 1906.

No. 260. Guardian's Bond of Monday Durant, guardian of Edna and Edith Durant, P. O. of Guardian, Lee, I. T.

Western Dist. Ind. Ter. Filed in Open Court, Dec. 9, 1905. R. P. Harrison, Clerk, U. S. Courts.

MARS & MARS,
Attorneys, Sapulpa, I. T.

9 In the United States Court of the Western District of Indian Territory, at Sapulpa.

Probate No. 260.

In the Matter of MONDAY DURANT, Guardian of EDNA and EDITH DUDANT.

To the Honorable Louis Sulzbacher, Judge of the United States Court for the Western District of Indian Territory, at Sapulpa:

Comes now your petitioner and respectfully represents and petitions this Honorable Court for the leasing of the allotment of Edna Durant, the same being the northeast quarter of section eleven (11), containing one hundred and sixty (160) acres, and also the allotment of Edith Durant, the same being the east half of the [north e-st] quarter of section fifteen (15), and the north half of the southeast quarter of section three (3), containing one hundred and sixty (160) acres, and being located in township seventeen (17) north of range twelve (12) east, of Creek Nation, Indian Territory; that said children are minor heirs of your petitioner and were born on the 2nd day of September, 1899, and each having arrived at the age of six (6) years.

Your petitioner would further represent unto this Honorable Court that the lands adjacent to and in the immediate vicinity of these lands are now being operated on for oil and gas, and he believes that it is to the best interest of said minors and the development of their estates that said lands be developed for oil and gas, and further believes that should he be not permitted to lease said lands that they would be *be* damaged thereby in suffering other parties to develop all around them.

Your petitioner would respectfully show unto this Honorable Court that the term of years for which said lease is made shall not extend for a period of more than two (2) years more than their majority.

MONDAY DURANT.

Subscribed and sworn to before me on this 16th day of December, 1905.

LAFE SPEER,
Notary Public.

My commission expires August 18, 1907.

Endorsed: Filed Dec. 19, 1905. R. P. Harrison, Clerk, Western Dist., I. T.

10 That the property of each of said minors is estimated to be worth fifteen hundred (1500) dollars. That unless a guardian be appointed there is great danger of the same being lost or destroyed.

And said petitioner further states that he will make a perfect inventory of the estate of said minors, and faithfully discharge all the duties incumbent upon him as such guardian, according to law; that he will use his utmost endeavors to collect all dues and pay all debts that may be adjudged by a Court of competent jurisdiction against his said awards; and when his said guardianship shall cease will pay over to the one duly authorized to receive the same, all moneys, credits and effects that are in his possession belonging to his said wards.

MONDAY DURANT.

Subscribed and sworn to before me this 6th day of December, A. D. 1905.

[SEAL.] JOHN M. WEEKS,
Notary Public.

My commission expires July 8th, 1906.

Endorsed: Filed December 7, 1905. R. P. Harrison, Clerk, Western District, I. T.

And thereafter, on the 9th day of December, 1905, the same being a day of the December term of said court, the court doth appoint Monday Durant to be guardian of Edith and Edna Durant, minors, and approves the bond of said Monday Durant in the sum of $1,000.00 and doth order letters of guardianship to issue to said Monday Durant.

And thereafter, on the 19th [day of] December, 1905, petition is filed herein for leave to lease lands for oil and gas purposes, which said petition is in words and figures as follows:

In the United States Court for the Western District of the Indian Territory, at Sapulpa.

No. 260.

In the Matter of MONDAY DURANT, Guardian of EDNA and EDITH DURANT.

Probate.

To the Honorable Louis Sulzbacher, Judge of the United States Court for the Western District of Indian Territory, at Sapulpa:

Comes now your petitioner and respectfully represents and
11 petitions this honorable court for the leasing and allotment of Edna Durant. The same being the northeast one-quarter of section (11) eleven, containing one hundred and sixty (160) acres and also the allotment of Edith Durant, the same being the east half of the northwest quarter of section fifteen (15) and the north half of the southeast quarter of section three (3), contain-

ing one hundred and sixty (160) acres and being located in township seventeen (17) north and range twelve (12) east, of Creek Nation, Indian Territory. That the said children are minor heirs of your petitioner and were born on the second day of September, 1899, and each having arrived at the age of six (6) years.

Your petitioner would further represent unto this honorable court that the land adjacent to and in the immediate vicinity of these lands are now being operated on for oil and gas, and he believes it is to the best interest of said minors and the development of their estates that said lands be developed for oil and gas, and farther believes that should he not be permitted to lease said lands that they would be damaged thereby, in suffering other parties to develop all around them.

Your petitioner would respectfully show unto this honorable court that the term of years for which said lease is made shall not extend for a period of more than two years more than their majority.

MONDAY DURANT.

Subscribed and sworn to before me on the 16th day of December, 1905.

LAFE SPEER,
Notary Public.

My commission expires August 18, 1907.

[Notary Seal, Western District.]

Endorsement: No. 260. Monday Durant, petitioner. Petition for Lease of Lands for Oil and Gas Purposes. Filed December 19, 1905. R. P. Harrison, Clerk Western District, I. T.

And thereafter, on the 22nd day of December, 1905, letters of guardianship are issued by the clerk to Monday Durant, which said letters of guardianship are in words and figures as [follows]:

12 *Letters of Guardianship.*

UNITED STATES OF AMERICA,
Indian Territory, Western District, ss:

To all to whom these presents shall come, Greeting:

Know ye, That, whereas Monday Durant has, on this day, by the United States Court in Probate in and for the said Western District of the Indian Territory, been appointed guardian for Edith Durant and Edna Durant, minors, under the age of 21 years, by his entering into Bond to the United States of America for the use of said minors in the sum of One Thousand Dollars, and whereas the said Monday Durant has this day filed his Bond in such sum to the United States of [American] for the use of said minors, which said Bond stands approved by the Court.

Now, therefore, the said Monday Durant is hereby authorized and empowered to collect and receive all moneys, property, and effects,

that are now, or hereafter may become due to his said wards, and in general to do and perform all and singular the duties devolving upon him as such guardian by law or that may be enjoined upon him by the lawful order, sentence or decree of any Court having competent jurisdiction.

In Testimony Whereof, I, R. P. Harrison, Clerk of the United States Court in Probate, in and for the said Western District in the Indian Territory, hereto set my hand and affix the seal of said court, at my office in Sapulpa, this 22nd day of December, A. D. 1905.

R. P. HARRISON, *Clerk,*
[SEAL.] By O. M. IRELAN, *Deputy.*

Endorsed: No. 260. Letters of Guardianship granted to Monday Durant, Guardian of Edith Durant and Edna Durant, Minors. Filed the 22nd day of December, A. D. 1906. R. P. Harrison, Clerk; By O. M. Irelan, Deputy. Recorded the 22nd day of December, A. D. 1905, in Guardian Record A, page 156.

And thereafter, on the 26th day of March, 1906, Thomas A. Sanson, Master in Chancery, files herein his reports on the petition of guardian to lease land of ward for oil and gas mining purposes, which said reports are in words and figures as follows:

13 In the United States Court in the Indian Territory, Western District, at Sapulpa.

No. 260. Probate.

MONDAY DURANT, Guardian, Lee, I. T.

Master's Report.

In the Matter of EDITH DURANT, a Minor.

Report of the Master in Chancery upon Petition of Guardian to Lease Lands of Ward for Oil and Gas Mining Purposes.

To the Honorable Louis Suzlbacher, Judge of said Court:

Comes now Thomas A. Sanson, Master in Chancery of this Court, to whom was referred the petition of the guardian filed herein, asking permission of the Court to lease the lands of his said ward, Edith Durant for oil and gas mining purposes, in accordance with the rules and regulations prescribed by the Honorable Secretary of the Interior, such order of reference having been made by this Court and entered of record on the 8th day of December, 1905, at the regular December, 1905, term of this Honorable Court, and begs leave to make the following report:

I.

This matter came on for hearing before me at Sapulpa in this District on the 18th day of January, 1906, and the following witnesses were sworn by me and examined and their testimony reduced to writing is hereto attached and made a part of this report:

Monday Durant, Lee, I. T.
Frank Chesley, Tulsa, I. T.
L. W. Lindsey, Tulsa, I. T.
John O. Mitchell, Tulsa, I. T.
Harry M. McFann, Claremore, I. T.

I further report that afterwards I caused to be published in the "Sapulpa Light," a newspaper of general circulation, published at Sapulpa in this District, a notice that sealed bids would be received by the guardian of this ward addressed to the guardian in my care, at Sapulpa, in this District, up to and including March 5, 1906, for an oil and gas mining lease upon the land of this ward, to-wit: The east half of the northwest quarter of section fifteen (15) and north half of the southeast quarter of section three (3), township seventeen (17) north, range twelve, (12) east, in the Creek Nation and Western District of Indian Territory, for a period of twelve
14 years (12), and that I caused such notice to be published in said newspaper weekly, for two consecutive weeks, the first publication being in the issue of said newspaper of February 23, 1906, and the second publication being in the issue of said newspaper of March 2, 1906, proof of which publication is filed herewith.

That I attended at the United States Court House at Sapulpa, in this District, on the 5th day of March, 1906, from 9 o'clock in the morning until 10 o'clock at night, and received bids [unt-l] 8 o'clock at night, at which time I publicly opened said bids and read the same in the presence of the guardian, bidders and all parties interested, and the following were all the bids received:

1. Lindsey & Chesley,
   A bonus of $800.00 and a royalty of one-tenth.
2. Laurel Oil & Gas Co.,
   A bonus of $1250.00 and a royalty of one-eighth.
3. Tammany Oil Company,
   A bonus of $1200.00 and a royalty of one-tenth.
4. Robert W. Morrison *et al.*,
   A bonus of $3490.00 and a royalty of one-tenth.
5. Laurel Oil & Gas Co.,
   A bonus of $2825.00 and a royalty of one-tenth.
6. Francis M. Selby,
   A bonus of $3400.00 and a royalty of one-tenth.

[7. On 80 acresshrdlumfwy pap uap uohrdlu hrdl hdrlu hrdlumwy.]

7. Lindsey & Chesley (on 80 acres of this tract),
8. Joseph H. Evans (and court expenses),
   A bonus of $2400.00 and a royalty of one-tenth.
9. Frank A. Baker,

A bonus of $1600.00 and a royalty of one-tenth.

10. Keystone Oil & Gas Co.,
A bonus of $1212 and a royalty [*or*] one-eighth.

11. Nicholas Franchote (on 80 acres of this tract),
A bonus of $1200.00 and a royalty of one-eighth.

And thereupon I publicly declared that Robert W. Morrison and his associates having offered the highest and best bid, that I would recommend to the Court that the guardian of this ward be authorized and directed to lease the land of his ward above described for oil and gas mining purposes, and that the guardian be ordered and directed to execute the said lease to Robert W. Morrison and his associates, in accordance with the rules and regulations of the Honorable Secretary of the Interior.

And thereupon Robert W. Morrison and his associates deposited with me a certified check in the said sum of [thirt-]-four hundred and ninety ($3490.00) dollars, payable to me as Master in Chancery, which I hold subject to the order of the court herein.

I further report that at the hearing had before me at Sapulpa in this District on January 18, 1906, that Lindsey & Chesley deposited with me their certified check upon the Farmers' National Bank of Tulsa, Indian Territory, in the sum of $1500.00 stating that of this sum $750.00 was offered as a bonus for the oil and gas mining lease upon the land of this minor, Edith Durant, and the balance of $750.00 as bonus upon the land of the minor Edna Durant, which check I hold subject to the further order of the Court herein.

I further report that on the 18th day of January, 1906, at the hearing had before me at Sapulpa in this District, The Laurel Oil & Gas Co., deposited with me its certified check upon the [Farmars'] and Merchants' Bank of Sapulpa, in the sum of $2500.00 stating that of this amount the sum of $1250.00 was offered as a bonus for an oil and gas mining lease upon the lands of this ward, Edith Durant, and the balance of $1250.00 was offered as a bonus upon the lands of the minor, Edna Durant, which check I still hold subject to the order of the Court herein.

I find that the guardians of this ward on the 16th day of December, 1905, executed an oil and gas mining lease upon these lands of his ward to Frank Chesley and L. W. Lindsey, of Tulsa, Indian Territory, for a period ending December 15, 1917, but the same has never been approved by the Court or by the *Court or by the* Honorable Secretary of the Interior.

Recommendations.

1. I recommend that an order be made herein authorizing and directing the guardian to lease the land of his ward, Edith Durant, hereinbefore described, for oil and gas mining purposes, in accordance with the rules and regulations of the Honorable Secretary of the Interior.

2. I recommend that an order be made herein authorizing and

ordering the guardian to execute an oil and gas mining lease
16 upon the said land of his said ward to Robert W. Morrison and his associates, for a period of time to expire on the day on which his said ward will attain her majority, and in accordance with the rules and regulations of the Honorable Secretary of the Interior, and that the lease when so executed and approved by the Honorable Secretary of the Interior, be approved by this Court.

3. That this guardian be required to make and file herein a new bond as such guardian in the sum of $7000.00 conditioned as required by law, and an additional bond in the sum of $1000.00, conditioned as required by Section 3511 of Mansfield's Digest, that he will "make such lease with fidelity and to the interest of his ward and faithfully to account for the proceeds derived from such lease according to law and as the order of the court may require," to be approved by the Court or by the Master in Chancery and Clerk of this Court.

4. That in case the guardian fails or neglects to execute said lease or to make and file such bonds, that a guardian of the estate of this minor be appointed by the Court, and required to execute such bonds and lease.

I respectfully ask the Court to allow me the sum of $174.50 for expenses incurred and services rendered herein, to be paid out of the moneys in my hands and that I be ordered to pay the balance of said sum to the guardian of said ward, upon his complying with the orders of Court herein.

All of which is respectfully submitted.

March 26, 1906.

THOMAS A. SANSON,
Master in Chancery.

Filed Mar. 26, 1906.

R. P. HARRISON,
Clerk Western Dist., I. T.

In [th-] United States Court in the Indian Territory, Western District, at Sapulpa.

No. 260. Probate.

In the Matter of EDNA DURANT, a Minor, MONDAY DURANT, Guardian, Lee, I. T.

Master's Report.

Report of the Master in Chancery upon Petition of Guardian to lease lands of ward for oil and gas mining purposes.

To the Honorable Louis Sulzbacher, Judge of said Court:

Comes now Thomas A. Sanson, Master in Chancery of this
17 Court, to whom was referred the petition of the guardian filed herein, asking permission of the Court to lease the lands

of his said ward, Edna Durant, for oil and gas mining purposes, in accordance with the rules and regulations prescribed by the Honorable Secretary of the Interior, such order of reference having been made by this Court and entered of record on the 8th day of December, 1905, at the regular December, 1905, term of this Honorable Court, and begs leave to make the following report:

I.

This matter came on for hearing before me at Sapulpa in this District on the 18th day of January, 1906, and the following witnesses were sworn by me and examined and their testimony reduced to writing is hereto attached and made a part of this report:

Monday Durant, Lee, I. T.
Frank Chesley, Tulsa, I. T.
L. W. Lindsey, Tulsa, I. T.
John O. Mitchell, [Tulsa,] I. T.
Harry H. McFann, Claremore, I. T.

I further report that thereafterwards I caused to be published in the "Sapulpa Light," a newspaper of general circulation, published at Supulpa in this District, a notice that sealed bids would be received by the guardian of this ward addressed to the guardian in my care, at Sapulpa in this District up to and including March 5, 1906, for an oil and gas mining lease upon the land of this ward, to-wit: The northeast quarter of section eleven (11), township seventeen (17), north, range twelve (12) east, in the Creek Nation and Western District of Indian Territory, for a period of twelve (12) years, and that I caused such notice to be published in said newspaper weekly for two consecutive weeks, the first publication being in the issue of said newspaper of February 23, 1906, and the second publication being in the issue of said newspaper of March 2, 1906, proof of which publication is filed herewith.

That I attended at the United States Court House at Sapulpa in this District on the 5th day of March, 1906, from 9 o'clock in the morning until 10 o'clock at night, and received bids until 8 o'clock at night, at which time I publicly opened said bids and read the same in the presence of the guardian, bidders and all parties interested and the following were all the bids received:

1. On Jan. 18, 1906, bid was made by Lindsey & Chesley of a bonus of $800.00 and a royalty of one-tenth.

18 2. On Jan. 18, 1906, a bid was made by Laurel Oil & Gas Co. of a bonus of $1250.00 and a royalty of one-eighth.

3. Tammany Oil Co., a bonus of $480.00 and a royalty of one-tenth.

4. Robert W. [Morriso *n*] *al.*, a bonus of $1640.00 and a royalty of one-tenth.

5. Laurel Oil & Gas Co., a bonus of $925.00 and a royalty of one-tenth.

6. W. E. Campbell, a bonus of $1000.00 and a royalty of one-tenth.

7. William P. Thompson, a bonus of $800.00 and a royalty of one-tenth.

8. Eastern Oil Co., a bonus of $893.00 and a royalty of one-eighth.

And thereupon I publicly declare that Robert W. Morrison and his associates, having offered the highest and best bid, that I would recommend to the Court that the guardian of this ward be authorized and directed to lease the land of his ward above described for oil and gas mining purposes, and that the guardian be ordered and directed to execute the said lease to Robert W. Morrison and his associates, in accordance with the rules and regulations of the Honorable Secretary of the Interior.

And thereupon Robert W. Morrison and his associates deposited with me a certified check in the said sum of sixteen [hunderd] and forty ($1640.00) dollars, payable to me as Master in Chancery, [whic] I hold subject to the order of the Court herein.

I further report that at the hearing had before me at Sapulpa in this District on January 18, 1906, that Lindsey & Chesley deposited with me their certified check upon the Farmers' National Bank of Tulsa, Indiana Territory, in the sum of $1500.00 stating that of this sum $750.00 was offered as a bonus for the oil and gas mining lease upon the land of this ward, Edna Durant, and the balance of $750.00 as bonus upon the land of the minor, Edith Durant, which check I hold subject to the further order of the Court herein.

I further report that on the 18th day of January, 1906, at the hearing had before me at Sapulpa in this District, the Laurel Oil & Gas Co. deposited with me its certified check upon the Farmers' and Merchants' Bank of Sapulpa, Indian Territory, in the
19 sum of $2500.00, stating that of this amount the sum of $1250.00 was offered as a bonus for an oil and gas mining lease upon the lands of this ward, Edna Durant, and the balance of $1250.00 was offered as a bonus upon the lands of the minor, Edith Durant, which check I still hold subject to the order of the Court herein.

I find that the guardian of this ward on the 16th day of December 1905, executed an oil and gas mining lease upon these lands of his ward to Frank Chesley and L. W. Lindsey of Tulsa, Indian Territory, for a period ending December 15, 1917, but the same has never been approved by the Court or by the Honorable Secretary of the Interior.

Recommendations.

1. I recommend that an order be made herein authorizing and directing the guardian to lease the land of his ward, Edna Durant, hereinbefore described, for oil and gas mining purposes, in accordance with the rules and regulations of the Honorable Secretary of the Interior.

2. I recommend that an order be made herein authorizing and ordering the guardian to execute an oil and gas mining lease upon the said land of his said ward to Robert W. Morrison and his associates, for a period of time to expire on the day on which his said ward will attain her [maj-rity], and in accordance with the rules and regulations of the Honorable Secretary of the Interior,

and that the lease when so executed and approved by the Honorable Secretary of the Interior be approved by this Court.

That this guardian be required to make and file herein a new bond as such guardian in the sum of $3500.00 conditioned as required by law, and an additional bond in the sum of $750.00 conditioned as required by Section 3511 of Mansfield's Digest, that he will "make such lease with fidelity and to the interest of his ward, and faithfully account for the proceeds derived from such lease according to law and as the order of the Court may require," to be approved by the court or by the Master in Chancery and Clerk of this Court.

4. That in case the guardian fails or neglects to execute said lease or to make and file such bonds, that a guardian of the estate of this minor be appointed by the court, and required to execute such bonds and lease.

I respectfully ask the court to allow me the sum of $82.00 for expenses incurred and services rendered herein, to be paid out of the moneys in my hands and that I be ordered to pay the balance of said sum to the guardian of said ward, upon his complying with the orders of Court herein.

All of which is respectfully submitted,

THOMAS A. SANSON,
Master in Chancery.

March 26, 1906.

R. P. HARRISON,
Clerk, Western Dist., I. T.

Filed Mar. 26, 1906.

In the United States Court in the Indian Territory, Western District, at Sapulpa.

No. 260.

Probate.

In the Matter of the Application for Approval of an Oil and Gas Mining Lease by MONDAY DURANT, Guardian of EDNA DURANT, a Minor.

Testimony taken before Thomas A. Sanson, at Sapulpa, Indian Territory, on January 18, 1906. Monday Durant, the guardian, appears in person. Lessees, Frank Chesley and L. W. Lindsey appear by Mars & Mars, their attorneys. The Laurel Oil and Gas Company appears by Harry H. McFann and by Fred Pfendler, Esq., its attorney. Lease executed on the northeast quarter of section 11, township 17 north, range 12 east, Creek Nation, Indian Territory, on the 16th day of December, 1905, to Frank Chesley and L. W. Lindsey.

Testimony taken in this case to apply in the Matter of the application for approval of an oil and gas mining lease by Monday Durant, guardian of Edith Durant, a minor, to same parties.

MONDAY DURANT, guardian, being first duly sworn, testified as follows:

Direct examination.

By Mr. MARS:

Q. State your name, age, occupation and postoffice address?
A. Well, my name is Monday Durant and as regards my age I don't know just exactly how old I am. I couldn't tell you when I were born but I guess I am somewhere about between forty-six and forty-seven. My postoffice is Lee, Indian Territory.
Q. Are you the father and guardian of Edna Durant?
A. Yes, sir.
Q. What is her age?
A. She is about six years old past.
21 Q. When was she born. Do you know the date of her birth?
A. No, sir.
Q. To refresh your memory, is it September 2, 1899?
A. Yes, sir, I believe it is somewhere along about there.
Q. Are you acquainted with Mr. Frank Chesley and L. W. Lindsey?
A. I am acquainted with Mr. Lindsey.
Q. The lessees in this case. Do you know Mr. Chesley when you see him?
A. Yes, sir.
Q. You are a citizen of the Creek Nation, are you?
A. Yes, sir.
Q. The child has an allotment in the Creek Nation?
A. Yes, sir.
Q. I will ask you whether or not that allotment is the northeast quarter of section 11, township 17 north, range 12 east?
A. Yes sir.
Q. [Whot] is the general character of that land for agricultural purposes?
A. Farming, I guess.
Q. Is there any improvements on it?
A. One quarter I have got improvements on.
Q. This one of Edna's?
A. None on Edna's. Just in cultivation.
Q. How much in cultivation?
A. About, I guess, a hundred acres of it in cultivation.
Q. What are you receiving annually from that for agricultural purposes ?
A. Well, when I have been leasing it I get a third and a fourth.
Q. Of the crops?
A. Yes, sir.
Q. Is there any portion of this land rough or has timber on it?
A. No, sir, no timber, just a draw went through it and it is pretty rough, one piece of it.
Q. About how much?

A. Well, now, I don't know, sir, just exactly. We never measured it.

Q. Are there any oil or gas wells on this land?

A. No, sir.

Q. Are there any wells close to it, and if so, in what direction?

A. Well, it is a well there I would call it about, as near as I could remember it is southwest from this.

Q. About how far is it?

A. I guess about a mile and a half probably.

Q. Southwest?

A. Yes, sir.

Q. Is it an oil or gas well?

A. I never was right at the well I just saw the derrick setting up there.

Q. Is that the Glenn well?

A. Yes, sir.

22 Q. Are there any other wells close to this land?

A. Well, now, I couldn't say and be positive because that is the onliest one I seen.

Q. Have you rented any other lands in this neighborhood down there?

A. Yes, sir.

Q. I believe you stated that you didn't know the distance of any other well from this land other than the Glenn well?

A. Yes, sir.

Q. Are there any developments or have there been any developments near this land prior to the bringing in of this Glenn well?

A. No, sir, not as I know of.

Q. Who brought in that well?

A. Mr. Frank Chesley and Mr. Lindsey, as far as I could understand.

Q. Do you know Mr. Mitchell?

A. No, sir.

Q. You don't know whether he is interested in it or not?

A. No, sir.

Q. What bonus are these people to pay you for this land?

A. Mr. Chesley there?

Q. Yes, sir, the lessees Chesley and Lindsey, how much are they to give you on this quarter? Have you executed any other lease to these people besides this one on any other land?

A. No, sir.

Q. Did you make one on Edith's land?

A. Yes, sir.

Q. Two leases, one on Edna's land and one on Edith's land?

A. Yes, sir.

Q. How much bonus are you to get?

A. They give me $600.00 and agree to put up a certified check whenever the lease is approved by the Secretary I guess, and then pay me $1000.00.

Q. That is $800.00 for each quarter?

A. Yes, sir.

Q. They have paid you $600.00?

A. Yes, sir.

Q. And they are to give you $1,000.00 when approved by the Secretary?

A. Yes, sir.

Q. That $600.00 you have received is so it can be turned into court, is it?

A. Yes, sir.

Q. That is you can turn it in to the Clerk of the Court, the money that you have received?

A. Yes, sir.

Q. Subject to the approval of the leases: Well, now, Mr. Durant, do you—has any one else leased this land or tried to prior to the bringing in of that well?

A. Yes, sir, I have had several men.

Q. Before that well was brought in?

A. No, sir, not a soul did come there to try and lease that country until after that well was brought in.

Q. Then until that development there was no demand for leases down there?

23 A. No, sir, until just the moment that well got there then I had a lot of men come there.

Q. Up to the time that you executed this contract and up until today, it is the largest bonus you have been offered for that land?

A. Yes, sir.

Q. Are other lands now being rented for drilling and operating, other lands around this tract of land?

A. Yes, sir.

Q. Are other parties fixing to drill wells in there?

A. Yes, sir.

Q. Isn't it a fact that other companies are fixing to put up derricks and drill there now?

A. I don't know, sir.

Q. You never noticed that?

A. No, sir.

Q. Do you consider it to the best interest of the minor that this land be leased for oil and gas purposes?

A. Yes, sir.

Q. You have asked the Court to approve this lease?

A. Yes, sir.

Q. Do you regard the development made by Mr. Chesley in that field down there as worth anything to you?

A. Yes, sir.

Q. And to your children's lands?

A. Yes, sir.

Q. Do you consider that—did you take that into consideration at the time you executed this lease?

A. Yes, sir, that is the reason I made the lease with them.

Q. It is your desire and preference that they have the land?

A. Yes, sir, they first went there and got the land [i nshape] to be developed. If it wasn't for that I couldn't get anything out of it.
Q. Do you consider that a good bonus?
A. Yes, sir.
Q. After you executed this lease and after Chesley and Mr. Lindsey had gone in there and developed the field, you believe that $800.00 taking into consideration the royalties that you are to get out of that land under your lease is to the best interest of the minor?
A. Yes, sir, I believe so.
Q. And it is your preference then that this lease be made to those people?
A. Yes, sir.
Q. Do you know their reputation for being developers of oil and gas?
A. No, sir, only what I have seen. That and what I heard. I heard Mr. Chesley made the land.
Q. And you felt under obligations to lease to him and considered $800.00 a quarter or $1600.00 for the two pieces a good and valid consideration for it?
A. Yes, sir.

Cross-examination.

By [Mr. PFLENDLER:]

Q. How much money have they paid you on each of these leases?
A. They gave me $600.00.
Q. When did they give it to you?
24 A. They gave me some this morning.
Q. How much did they give you this morning?
A. I can't just tell you right now.
Q. Was it cash or a check?
A. Check.
Q. Have you got the check in your pocket?
A. Yes, sir.
Q. Will you please produce it to the Court?
MASTER: Can you read?
A. A very little.
Q. What does that check say?
A. $500.00.
Q. Now, Monday, how much do you say that check is for?
A. $500.00.
Q. When did they pay you any more? Is that all they paid you?
A. That is all they paid me this morning, yes, sir.
Q. Have you any contract with them that they will pay you anything additional?
A. No, sir. I am holding no [defin-te] contract.
Q. Nothing definite?
A. No, sir, no contract.
Q. What else are they to pay you, if anything?
A. They agreed to give me a certified check for the balance of the money.

Q. How much?
A. $1000.00.
Q. When?
A. As quick as the Secretary approves the lease.
Q. What royalty are they giving you?
A. One-tenth if I ain't making a mistake.
Q. Do you know where that Glenn well is out there?
A. Yes, sir.
Q. Which direction are these lands located from that well?
A. The Edith land you might say it is pretty much right out, well it is a little south and west from the Glenns.
Q. And Edna's. Which way is that located?
A. Now, I would call it about northeast.
Q. North and east both?
A. Yes, sir.
Q. How far is it from the well?
A. Well, now Edna's I [-udge] it to be about a mile, probably a little farther.
Q. Practically the land is on four sides of this well?
A. Yes, sir.
Q. Practically surrounds that well?
A. Yes, sir.
Q. By leasing the lands together whoever gets it gets the circumference of that well?
A. Yes, sir.
Q. Have you been offered any other bonus yesterday or today on these two allotments?
A. Yes, sir, I was offered yesterday?
Q. How much were you offered yesterday?
A. About $1600.00.
Q. Were you offered anything today?
A. Yes, sir, as I came up here.
Q. How much were you offered?
A. Now, I disremember. The man grabbed me and pulled me so hard that I can't tell you what he did say.
Q. Was it more than Mr. Chesley and Mr. Lindsey agreed to pay you?
A. I am trying to think now what the gentleman said to me.
Q. What did they offer you?
A. Now yesterday they offered me——
Q. Today?
A. I can't tell you.
Q. What did they offer you this morning?
A. Please, sir, your honor, I can't think now.
Q. About three weeks ago you were making contracts with Mr. Sofer and Mr. Shirley of Red Fork and Mr. Brown?
A. Yes, sir.
Q. And after that Mr. Lindsey got a hold of you and Mr. Chesley and you dropped them and went to dickering with these people?
A. Yes, sir, that's right.

Q. Because they offered you a little more than Mr. Brown. This morning you were offered $2500.00 provided you would lease both allotments and one-eighth royalty?
A. That might have been it.

By the MASTER:

Q. You have been offered $2500.00 and one-eighth royalty?
A. Yes, sir.
Q. Who by?
A. That's the gentleman who got hold of me this morning.

By Mr. PFENDLER:

Q. With the understanding that both allotments are leased.
MASTER: Are you ready to make that good with a certified check of $2500.00?
Mr. PFENDLER: Yes, sir, provided both allotments are leased.
Q. The expenses of this proceeding are to be charged up under this contract with Mr. Lindsey against the estate, are they not? You have filed your reports charging it up to the estate of the minor. We will introduce the reports wherever they are. Are they to pay the expenses of this or is the estate to pay it?
A. I guess they is to pay the expenses.
Q. The appointment of the guardian was charged up to this estate, wasn't it?
A. I guess so.
Q. Well, now, Monday, if you can get $2500.00 for those children from leasing both allotments to one company and to
26 a company that can make satisfactory showing from the standpoint of experience and financial ability, don't you think that it would be your duty as guardian of the children to make that lease?
A. Yes, sir, I guess it would, but then of course I was giving the men the preference who done up the land and made it worth that.
Q. You look at it from sort of a moral standpoint then?
A. Yes, sir.
Q. To the extent of $900.00.

Direct examination.

By Mr. MARS:

Q. These people, Mr. Durant, have their rigs all over that country, haven't they?
A. Yes, sir, already have their rig there.
Q. They are ready to go to work?
A. Yes, sir.
Q. How many times have these people offered and ran after you to get you to make this lease?
A. I can't tell you.
Q. They have gone down to Lee after you two or three times?
A. Yes, sir, I live a mile and a half of Lee [and they] come clean out there, four miles northeast of Boynton.

Q. This man Brown only offered you $100.00?
A. That was all.
Q. And Mr. Chesley and these people when they said $1600.00 the other people offered you the $1500.00?
A. Yes, sir.
Q. And now they *they* are going around here offering you $2500.00?
A. Yes, sir.
Q. Your preference is that the lease be made to Chesley and Lindsey?
A. Yes, sir.
Q. The money that you have received, the other $100.00, has been the expense incurred in the making of these leases?
A. Yes, sir.
Q. And your reports as guardian show $25.00 on each piece of land for agricultural purposes, does it not?
A. Yes, sir.
Q. You have sworn to your report?
A. Yes, sir.
Q. And all then that is charged up here is the actual expense of the appointment of the guardian?
A. That is all.
Q. I want to ask you this question. Has any one sought you or come to you to get you to change your reports in any way?
A. No, sir, no more than to try to get me to make a lease.
Q. I mean your reports for the agricultural part of the land?
A. No, sir.
Q. That is all the money you received up until the time you made this oil lease?
A. Yes, sir.
27 Q. These people that are offering you $2500.00, you stated you are not positive about that, there were no checks made or offered or any payment?
A. No, sir.
Q. They just stated that they would give you that after they found out these people would give you $1500.00?
A. Yes, sir.

Witness excused.

FRANK CHESLEY, being first duly sworn, testified as follows:

Direct examination.

By Mr. MARS:

Q. State your name, age, occupation and postoffice address?
A. Frank Chesley, 39 years old, oil producer, Tulsa, I. T.
Q. How long have you been engaged in the leasing and developing of oil and gas, Mr. Chesley, as an oil producer?
A. Off and on about ten years. Not all the time.
Q. Where?

A. In Pennsylvania and New York state first and in the Red Fork field.

Q. You are a party lessee in the leases made by Monday Durant, guardian of Edith and Edna Durant?

A. I am.

Q. Are you acquainted with the land of Edith Durant and Edna Durant?

A. I am.

Q. Have you ever been over and upon this land?

A. I have.

Q. Is there any oil or gas wells upon that land?

A. There is not.

Q. Where and in what direction is the closest oil or gas well?

A. To Edna Durant a mile and a half.

Q. What well is that?

A. The Glenn well.

Q. How close to Edith's land?

A. About a mile and a half from the one eighty and about three-quarters of a mile from the other eighty.

Q. What are the next closest wells to this land?

A. there is a well near the Edna Durant land, I think about six miles right north—the Seigler well. It may be a little further.

Q. Who brought in this Glenn well?

A. Mr. Galbraith and myself.

Q. Prior to the bringing in of this well what was the closest well, Mr. Chesley?

A. About ten miles. About eight from one and ten from the other. This is in two different pieces.

Q. You went into that field, took this Glenn lease and brought in this well, did you?

A. Yes, sir.

Q. And there have been no other leases taken or other developments made within ten miles of it?

A. No, sir.

28 Q. What bonus are you to give Mr. Durant on each lease?

A. $800.00 a lease, $1600.00 for the two.

Q. How much has been paid?

A. In cash?

Q. Yes, sir.

A. $100.00 in cash and $500.00 in a check.

Q. The check that was produced in court?

A. Yes, sir.

Q. Are you ready and willing to produce a certified check for the balance of the bonus $1500.00?

A. I am.

Q. The $100.00 that was paid was that incurred in securing these leases, he expenses of Mr. Durant?

A. I expect it was. We paid him the cash, money to come here and execute the leases. We are to pay the expenses for the leases besides that and the court fee.

Q. And there is no attorney fee to be charged to the ward?

A. No, sir.
Q. Your contract is to be in addition to the $100.00 paid?
A. Yes, sir.
Q. Have you any other derricks or rigs ready to begin operations on this land if these leases should be approved?
A. I have.
Q. Is it your intention in good faith to develop this land?
A. It is.
Q. And if these leases should be approved to you, you are able and having had sufficient experience to operate this land thoroughly and develop it for oil and gas?
A. Yes, sir.

By the MASTER:

Q. Can you give the bond required by the Secretary of the Interior?
A. Yes, sir.

By Mr. MARS:

Q. You stand ready and willing to do that?
A. I am willing to do that. I am willing more than what the prescribed lease requires. I am willing to commence operations at once and not wait the year and protect the lines also. If anybody gets up against it I will protect that line also.
Q. That is your intention in making this lease?
A. Yes, sir.
Q. Now, Mr. Chesley, you know L. W. Lindsey, do you?
A. Yes, sir.
Q. How long have you known him?
A. I expect about five or six years.
Q. You and he are interested jointly in these leases are you?
A. We are.
Q. You know him to be able and capable and a man having experience that should these leases be approved to you that he will comply with his part of the contract?
A. Yes, sir.

29 Witness excused.

MONDAY DURANT, recalled, testified as follows:

Examination.

By Mr. MARS:

Q. Edith Durant is a sister of Edna, your child?
A. Yes, sir.
Q. Are these children twin sisters?
A. Yes, sir.
Q. How old are they?
A. Six years old.
Q. They were born on the 2nd day of September, 1899, were they?
A. Yes, sir.

Witness excused.

L. W. LINDSEY, being duly sworn, testified as follows:

Direct examination.

By Mr. MARS:

Q. State your name and age, occupation and postoffice address?
A. A. L. Lindsey, 59 years old. Real estate. Building and Investment. Tulsa.
Q. How long have you been engaged in the taking of oil and gas leases and the development of oil and gas?
A. This is my first experience.
Q. You are a party lessee in this lease?
A. Yes, sir.
Q. Are you acquainted with the lands?
A. I am.
Q. Is there any developments now on this land?
A. No, sir.
Q. What is the closest oil or gas well?
A. A mile and a half.
Q. What well is that?
A. On the Glenn tract.
Q. What is the next closest well and in what direction?
A. I would say about seven miles. The Seigler well, about seven miles.
Q. What bonus are you to give on this land?
A. $1600.00.
Q. $800.00 for each quarter?
A. Yes, sir.
Q. How much has been paid?
A. $600.00.
Q. That includes——
A. The $500.00 check and the $100.00 expense money.
Q. Mr. Lindsey, were there any developments anywhere within seven or eight miles of this land prior to the bringing in of this Glenn well?
A. There was not.
Q. Who brought it in?
A. Chesley and Galbraith.
Q. Are you acquainted with Mr. Chesley as being well able and capable to develop this land for Edith Durant and Edna Durant should the lease be approved?
A. I am.
Q. Do you stand ready and willing to comply with the regulations upon [you] part as a party lessee?
A. I do.
Q. You are able to give bond and develop this land?
A. [Ye-], sir.

By the MASTER:

Q. Tell me about the Glenn well. What kind of a well is it?
A. Supposedly a fair well. However, it has not been tested as yet. I don't know the exact production of the well.

Q. Is it being pumped?
A. No, sir, I think not.

By Mr. MARS:

Q. Has it ever been pumped? Flows without pumping?
A. Yes, sir.

By the MASTER:

Q. How many barrels a day?
A. That is a question. I suppose fifty barrels. It has been variously estimated.
Q. What quality of oil?
A. It has not been tested. Supposed to be fair oil.
Q. The same as the Red Fork oil?
A. Yes, sir, similar.

By Mr. MARS:

Q. This is the largest bonus that you have paid for any lands in that locality?
A. Yes, sir.
Q. You are not interested in any other leases in that neighborhood, are you?
A. Yes, sir.

By the MASTER:

Q. Was the Glenn tract an adult lease?
A. I am not party lessee to that lease.

By Mr. MARS:

—. The lands are being leased in that neighborhood are they for oil and gas purposes?
A. Yes, sir.
Q. Have you and Mr. Chesley derricks and rigs ready to operate that lease?
A. We have on the Glenn property, yes, sir.
Q. About what does it cost to bring in a well?
A. It depends on the circumstances, but probably from two to three thousand dollars.
Q. Did you take into consideration the development of this field in giving this bonus?
A. Yes, sir.
Q. You thought that you were really entitled to it?
A. Yes, sir.
Q. You are interested in other matters with Chesley is the reason you took an interest in this?
A. Yes, sir. I wish to state that when we developed this well we had the promise and expected to acquire these contiguous grounds before we made the investment.

31 Witness excused.

JOHN O. MITCHELL, being first duly sworn, testified as follows:

Direct examination.

By Mr. MARS:

Q. State your name, age, occupation and post-office address?
A. John O. Mitchell. Age 46 years. Tulsa, I. T.
Q. What business are you engaged in?
A. Oil business and brick manufacturer.
Q. Do you know Frank C. Chesley and L. W. Lindsey?
A. Yes, sir.
Q. Are you acquainted with the lands of Edna Durant and Edith Durant?
A. I know about where they are located but I have never been on the land.
Q. Do you know where the Glenn well is?
A. Yes, sir.
Q. Do you know how the lands are situated as to this well?
A. Quite a little distance from it but not far.
Q. Do you know the reputation of Frank Chesley as being able and capable of developing that field down there for oil and gas?
A. Yes, sir, that is the way I know him as being able and capable. He has a rig and has been drilling since last summer.
Q. What is the closest well to this land aside from the Glenn well?
A. I don't know. Quite a distance.
Q. How far is it from the Red Fork field?
A. I always understood it was about ten miles from any production.
Q. They went out there on a wildcat proposition?
A. Yes, sir.
Q. They were criticised because they did so?
A. Yes, sir.
Q. Have you taken any leases in this immediate vicinity of the Edna and Edith Durant lands?
A. The Posey leases. I don't know how close they are.
Q. What is the biggest bonus that has been paid out there?
A. At the time I was there $125.00 or $200.00 a quarter but I haven't been in there lately.
Q. Do you consider $800.00 a quarter for that land a good bonus?
A. It would be more than I would want to give.
Q. Then Mr. Chesley and Mr. Galbraith did develop that field did they not?
A. Yes, sir they were the first developers.
Q. Prior to the bringing in of this Glenn well, what would you have given for an oil or gas lease in this vicinity?
A. Just around the expense of taking them.
32 Q. Did you take any prior to the time this was brought in?
A. Forty acres.
Q. What bonus did you give in that case?
A. One dollar an acre. That was some time ago.
Q. Have you taken any leases since then?

A. The Posey lease. $125.00 a quarter for two quarters of it and $50.00 for fifty-five acres and then another quarter that is down by Concharte [mount-ins]; didn't give anything for that.

Q. Took that on a wildcat scheme?

A. Yes, sir.

Q. Do you know the reputation of Mr. Lindsey as being able and having had experience to develop land for oil and gas should this lease be approved?

A. His reputation has been good. As to his experience in the oil business I don't know.

Q. He is able to give the bond?

A. That is his reputation.

Q. And develop the land?

A. Yes, sir.

Q. Mr. Chesley then is a producer?

A. Yes, sir. Has been ever since I have known him.

Witness excused.

HARRY M. MCFANN, being first duly sworn, testified as follows:

Direct examination.

By Mr. PFENDLER:

Q. State your name?

A. Harry H. McFann.

Q. Age, residence and occupation?

A. 29, Claremore, I. T. Superintendent and general Manager for the Laurel Oil and Gas Co.

Q. How [lang] has that company been operating in the Indian Territory?

A. Just about a year.

Q. Are you acquainted with the allotments of Edith and Edna Durant that lie some [fize] or six miles east of Sapulpa?

A. Yes, sir, I am.

Q. Do you know the location of what is known as the Glenn well?

A. Yes, sir, I do.

Q. I will ask you to locate that well on that map and also to locate the allotments of Edith and Edna Durant on which there is a hearing now before this court for the purpose of getting oil and gas mining leases.

A. I can give the location here. One eighty, the Edith Durant, lies south and west a little over a quarter of a mile from the Glenn well and the other eighty of Edith's lies north of the Glenn well about a mile. The 160 acres of Edna Durant lie east a half mile and a quarter of a mile north of the Glenn well.

Q. You have been out and examined these tracts of land?

A. Yes, sir.

33 Q. And you have been at the Glenn well?

A. Yes, sir.

Q. You are acquainted with Monday Durant?

A. I am. Just lately. For the last two weeks.

Q. He is the father and guardian of those children?

A. Yes, sir, so I understand.

Q. With whom was he first negotiating for leases when you first met up with him?

A. Frank Brown, of Red Fork.

Q. And then to your knowledge did he negotiate and figure with any one else, and if so, whom?

A. Frank Brown and then Mr. Lindsey tried to make a deal with him.

Q. Do you — what Frank Brown offered him?

A. I do not.

Q. Did you understand why he dropped the negotiations with Mr. Brown who represented a firm at Red Fork and continued the negotiations with other parties?

A. The understanding was that Mr. Brown didn't comply with his agreement and Mr. Lindsey had offered him more money.

Q. Have you ever made any proposition to Durant?

A. I made a proposition to him about two weeks ago.

Q. What was your proposition then?

A. $400.00.

Q. And do you know whether that was more at that time than what Lindsey had offered him?

A. I think it was.

Q. In other words, you raised Lindsey, Lindsey raised you and state what has been done since.

A. I raised him yesterday evening. This morning I learned that they had agreed to raise me and I went and made him an offer of $2500.00 and one-eighth royalty for the land.

Q. State why you as the representative of your company are so anxious to get this land. Is that for leases for all of this land?

A. Yes, sir.

Q. Why?

A. It lays virtually all around that well. If we go in and drill on one piece of land and get a dry hole we have a chance on the other piece. If we get oil on one piece we will win out.

Q. If that land was situated on one side would it be worth anything like that bonus?

A. No, sir.

Q. Possibly three or four hundred dollars a quarter if it was all on one side?

A. Yes, sir.

Q. From your experience—how long have you been engaged in the oil business?

A. All my life.

Q. Where?

A. Pennsylvania, Virginia and Ohio fields.

Q. From your experience does this make it more valuable because it surrounds this well?

A. Yes, sir. It makes it more valuable if you can get it all around.

34 Q. Because you find the outlet of the channel?

A. Yes, sir, have a chance.

Q. Owing to the way that land is situated and owing to the fact that there is a producing oil well in the center, or owing to the fact that there is a producing oil well which is surrounded by this land, if you should obtain a lease on this land what would be your idea as to immediate development and why?

A. Our idea would be to develop the land as soon as the leases are approved because it has been already proved.

Q. Has your company, Laurel Oil & Gas Co. ever made any showing satisfactory to the Department of the Interior?

A. Yes, sir, a satisfactory showing of $41,000.00 actually paid in.

Q. Have you taken some leases around out there?

A. Yes, sir, I have.

Q. And that is the only feature of these tracts of land that would induce you to pay this bonus, owing to the fact that it practically surrounds that oil well?

A. Yes, sir.

Q. What is its capacity?

A. From what I understand, probably thirty barrels.

Q. Have you been out there?

A. Yes, sir.

Q. Your company stands ready to make this $2500.00 offer of bonus good, and ready to enter into contract to begin the development for oil and gas on this land as soon as the leases [sh-uld] be approved by the Secretary?

A. Yes, sir, we are.

Q. When did [y-u] offer Durant $1500.00?

A. Yesterday evening.

Q. What did he say?

A. He said he would take it. He said that was more than he had been offered, to put up the certified check, and we wrote up a little contract that this was to be put up in the bank and paid to him when the Court approved this lease and this morning they came around and said they would give $1600.00.

Q. And so you simply made him another offer?

A. Yes, sir, here in the hall.

Q. You haven't had time to make the certified check?

A. No, sir.

Cross-examination.

By Mr. MARS:

Q. When did you first examine these lands?

A. About December 12th, I think it was.

Q. Was that before or after this well was brought in?

A. After.

Q. That was the first time you had ever been out there?

A. Yes, sir.

35 Q. You didn't go there prior to the time Mr. Chesley went down there and developed this Glenn well?

A. No, sir.

Q. You didn't go there until after this well was brought in?

A. No, sir.
Q. You didn't [at-empt] to make this lease until after that?
A. No, sir, I did not. I had no object in doing it.
Q. Do you regard it worth anything to develop a field?
A. I don't know as it is.
Q. What about you going west here ten miles? Did you think that a favorable situation?
A. Yes, sir, I thought so or I wouldn't have gone out there.
Q. That is ten miles from the Red Fork field?
A. [I don't] know.
Q. You wouldn't go out and put out several thousand dollars and go out there on a wildcat scheme?
A. In a certain way I might. I am not in the wildcat business.
Q. You have done something of it, haven't you?
A. I have done a little.

Witness excused.

And thereafter, on the 29th day of March, 1906 the applications of Robert Morrison *et al.* for approval of oil and gas leases, reports of guardian and affidavits of lessees as to financial responsibility — filed herein which are in words and figures as follows:

In the District Court of the United States in and for the Indian Territory, Western District, at Sapulpa.

[In the] Matter of the Estate of EDNA DURANT, Minor, MONDAY DURANT, Guardian.

Application for the Approval of an Oil and Gas Mining Lease upon Lands of said Minor Executed to Robert W. Morrison and others by the Guardian.

Comes now Robert W. Morrison, William J. Breene, Charles W. S. Cobb and Frank M. Breene, and respectfully state to the Court:

That Honorable Thomas A. Sanson, Master in Chancery in this Court, advertised in the newspapers published at Sapulpa, Creek Nation, Indian Territory, that he as such Master would up to and including the fifth day of March, 1906, [received] sealed bids for an oil and gas lease upon the lands of said Edna Durant minor described as follows, to-wit:

The northeast quarter of section eleven (11) township sev-
36 enteen (17) range twelve (12) east, Creek Nation, Indian Territory, and that a lease for oil and gas upon the said land would be awarded to the highest and best bidder or bidders.

That a copy of the said advertisement is attached hereto made a part hereof and marked exhibit A.

That in accordance with the terms of said advertisement your petitioners presented the said Master a sealed bid for an oil and gas lease upon the lands of said minor described above, that your

petitioner- bid thereon the sum of sixteen hundred forty ($1640.00) dollars.

That at eight o'clock p. m. on said fifth day of March, 1906, said Master Thomas A. Sanson, sitting at Sapulpa, opened all bids submitted to him upon said land and then and there found and declared the bid of your petitioners to be the highest and best bid for an oil and gas lease upon said land and awarded said lease to said petitioner- and directed the guardian, Monday Durant, to execute to your petitioners an oil and gas lease upon the above and described land in the form and manner prescribed by the Secretary of the Interior, for oil and gas leases in the Creek Nation.

But thereafter and on the seventh day of March, 1906, your petitioner- deposited with said Master Thomas A. Sanson a certified check for the amount of their bid, to-wit, the sum of sixteen hundred forty ($1640.00) dollars, taking his receipt [therefore].

That on the 9th day of March, 1906, Monday Durant, guardian of the said Edna Durant, minor, in pursuance of the order of the said Master made and executed an oil and gas lease upon the lands of said minor described above, to your petitioner-, that said lease is upon the form and in the matter prescribed by the Honorable Secretary of the Interior, for oil and gas leases in the Creek Nation, a copy of said lease is attached hereto marked exhibit B and made a part [*of*] hereof.

That your petitioners are men of large experience in the oil business and are possessed of ample means to develop said property for oil and gas.

Wherefore, your petitioners pray that all the acts and things done by the said Master Honorable Thomas A. Sanson in the advertising for bids awarding said lease and ordering the guardian to execute the same and the report of said Master herein be fully approved by the court and that the lease executed upon the said land by the said guardian to your petitioners be fully approved, ratified and confirmed.

SHEA & MONTGOMERY,
Att'ys for Petitioner-.

37 UNITED STATES OF AMERICA,
Creek Nation, Indian Territory,
Western Judicial District, ss:

Be it remembered that on this nineteenth day of March, 1906, before me a Notary Public in and for Western Judicial District of the Indian Territory came Frank M. Breene, who being by me first duly sworn on his oath stated that he had read the above and foregoing petition and that the matters and things therein contained were true.

Subscribed and sworn to before me this 17th day of March, 1906.

——— ———,
Notary Public.

My commission expires ———.

Public notice is hereby given that in the following numbered and entitled cases pending upon Probate docket of said Court, the said guardians having been authorized by the Court to lease certain lands of their wards for oil and gas purposes to the highest and best bidder or bidders therefor, that sealed bids will be received by said guardians addressed to them in [case] of Thos. A. Sanson, Esq., Master in Chancery, at Sapulpa, Indian Territory, up to and including the 5th day of March, A. D. 1906, for a lease on the lands herein described as follows, towit:

Probate No. 260, Edna Durant, minor, aged 6 years, Monday Durant, guardian. The northeast quarter of section 11, township 17 north, range 12 east, Creek Nation, Indian Territory, for a period of twelve years.

Probate No. 260, Edith Durant, minor, aged 6 years, Monday Durant, guardian. The east half of the northwest quarter of section 15 and the north half of the southeast quarter of section 3, township 17 north, range 12 east, Creek Nation, Indian Territory, for a period of twelve years.

Such bids shall state the bonus and royalty offered for such lease or leases, and on the outside of the envelope shall be endorsed the number of the case and the name of the ward and in all respects shall comply with [th-] order of Court made and entered of record on the 2nd day of August, A. D. 1905.

Dated Sapulpa, Indian Territory, February 16, A. D. 1906.

THOMAS A. SANSON.

Exhibit same as this attached to application for approval of case in Edith Durant estate.

Public notice is hereby given that [in the] following num-
38 bered and entitled causes pending upon the probate docket of said court, the said guardians having been authorized by the court to lease certain lands of their wards for oil and gas purposes to the highest and best bidder or bidders therefor, that sealed bids will be received by the said guardians addressed to them in care of Thos. A. Sanson, Esq., Master in Chancery, at Sapulpa, Indian Territory, up to and including the 5th day of March, A. D. 1906, for a lease on the lands herein described as follows, to-wit:

Probate No. 260, Edna Durant, minor, aged 6 years, Monday Durant, guardian. The northeast quarter of section 11, township 17 north, range 12 east, Creek Nation, Indian Territory, for a period of twelve years.

Probate No. 260, Edith Durant, minor, aged 6 years, Monday Durant, guardian. The east half of the northeast quarter of section 15 and the north half of the southeast quarter of section 3, township 17 north, range 12 east, Creek Nation, Indian Territory, for a period of twelve years.

Such bids shall state the bonus and royalty offered for such lease or leases, and [on the] outside of the envelope shall be endorsed the number of these cases and the name of the ward and in all

respects shall comply with the order of court made and entered of record on the 2nd day of August, A. D. 1905.

Dated Sapulpa, Indian Territory, February 16, A. D. 1906.

THOMAS A. SANSON,
Master in Chancery.

Endorsed: Filed Mar. 29, 1906. R. P. Harrison, Clerk, Western Dist., I. T.

In the District Court of the United States in and for the Indian Territory, Western District of Sapulpa.

In the Matter of the Estate of EDITH DURANT, Minor; MONDAY DURANT, Guardian.

Application for the Approval of an Oil and Gas Mining Lease upon Lands of said Minor, Executed to Robert W. Morrison and Others by the Guardian.

Come now Robert W. Morrison, William J. Breene, Charles W. S. Cobb and Frank M. Breene, and respectfully state to the Court:

That Honorable Thomas A. Sanson, Master in Chancery in this Court, advertised in the newspapers published at Sapulpa, Creek Nation, Indian Territory, that he as such Master would, to
39 and including the fifth day of March, 1906, receive sealed bids for an oil and gas lease upon the lands of said Edith Durant, minor, described as follows, to-wit:

The East Half of the Northwest Quarter of Section fifteen and North Half of the Southeast Quarter of Section three Township seventeen North, Range twelve East, Creek Nation, Indian Territory, and that a lease for oil and gas upon the said land would be awarded to the highest and best bidder or bidders.

That a copy of the said advertisement is attached hereto, made a part hereof and marked Exhibit A.

That in accordance with the terms of said advertisement your petitioners presented the said Master a sealed bid for an oil and gas lease upon the lands of said minor described above, that your petitioners bid thereon the sum of three thousand four hundred ninety ($3490.00) Dollars.

That at eight o'clock P. M. on said fifth day of March, 1905, said Master Thomas A. Sanson, sitting at Sapulpa, opened all bids submitted to him upon said land and then and there found and declared the bid of your petitioners to be the highest and best bid for an oil and gas lease upon said land awarded said lease to said petitioners and directed the Guardian Monday Durant to execute to your petitioners an oil and gas lease upon the above and described land in the form and manner prescribed by the Secretary of the Interior, for oil and gas leases in the Creek Nation.

That thereafter and on the seventh day of March, 1906, your petitioners deposited with said Master Thomas A. Sanson a certified check for the amount of their bid to-wit, the sum of three thousand

four hundred ninety ($3490.00) dollars taking his receipt therefor.

That on the 9th day of March, 1906, Monday Durant, guardian of the said Edith Durant, minor, in pursuance of the order of the said Master, made and executed an oil and gas lease upon the lands of said minor described above, to your petitioners, that said lease is upon the form and in the manner prescribed by the Honorable Secretary of the Interior, for oil and gas leases in the Creek Nation, a copy of said lease is attached hereto marked "Exhibit B" and made a part hereof.

That your petitioners are men of large experience in the oil business and are possessed of ample means to develop said property for oil and gas.

Wherefore your petitioners pray that all the things done by the said Master, Honorable Thomas A. Sanson, in the advertising for bids awarding said lease and ordering the guardian to execute the same and the report of said Master filed herein be fully approved by the Court and that the lease executed upon the said land by the said guardian to your petitioners be fully approved, ratified and confirmed.

SHEA & MONTGOMERY,
Attorneys for Petitioner-.

UNITED STATES OF AMERICA,
Creek Nation, Indian Territory,
Western Judicial District, ss:

Be it remembered that on this 19th day of March, 1906, before me, a Notary Public in and for the Western Judicial District of the Indian Territory, came Frank M. Breene, who being by me first duly sworn, on his oath stated that he had read the above and foregoing petition and that the matters and things therein contained were true.

Subscribed and sworn to before me this 19th day of March, 1906.

——— ———,
Notary Public.

My commission expires ——.

Filed Mar. 29, 1906.

R. P. HARRISON,
Clerk, Western Dist., I. T.

In the United States Court for the Western District of the Indian Territory, Sitting at Sapulpa.

No. 260.

In the Matter of the Estate of EDNA DURANT, Minor; MONDAY DURANT, Guardian.

Report of Guardian.

Comes now Monday Durant, Guardian of Edna Durant, a minor, and respectfully states to the court that Thomas A. Sanson, Master

in Chancery, advertised that on the 5th day of March, 1906, he would receive sealed bids for an oil and gas mining lease on the lands of said minor, Edna Durant, said lease to continue during the minority of said minor.

That the land so advertised is described as follows, to-wit:

The Northeast Quarter of Section Eleven (11) Township Seventeen (17) Range Twelve (12) East, Creek Nation, Indian Territory.

That on said 5th day of March, 1905, sealed bids were made by various parties, and deposited with the said Master in Chancery, and at eight o'clock P. M. on said day the bids were opened in public by the said Master, Thomas A. Sanson.

41 That Robert W. Morrison, Charles W. S. Cobb, William J. Breen and Frank M. Breene bid as a bonus for the land of said minor the sum of Sixteen hundred forty ($1640.00) Dollars.

That the Master found that the said bid was the highest and best bid for said land and made an order awarding the lease to said bidders.

That on the 7th day of March, 1906, said Robert W. Morrison, Charles W. S. Cobb, William J. Breene and Frank M. Breene deposited with the Master aforesaid a certified check for the amount of their bid, Sixteen Hundred Forty ($1640.00) Dollars, and on the said day the said Master made an order directing this guardian to execute a lease for oil and gas upon the [lan- *d*of] said minor to the above named bidders.

That on the 9th day of March, 1906, I, as guardian made and executed an oil and gas lease upon the lands of Edna Durant described above to Robert W. Morrison and Charles W. S. Cobb of St. Louis, Missouri, William J. Breene of Oil City, Pa., and Frank M. Breene of Independence, Kansas. That said lease was executed upon the form prescribed by the Honorable Secretary of the Interior and a copy of same is attached hereto and made a part of this report.

That I attach hereto and make a part of this report a copy of the Master's receipt for the certified check to him for the amount paid as bonus.

Wherefore I ask that the lease aforesaid made and executed by me as guardian of Edna Durant, minor, on the 9th day of March, 1906, to Robert W. Morrison, Charles W. S. Cobb, William J. Breene and Frank M. Breene, be fully approved by this Court and that all the acts and things done by me in the execution of said lease as guardian be ratified and confirmed.

(Signed) MONDAY DURANT,
Guardian of Edna Durant.

UNITED STATES OF AMERICA,
Indian Territory, Western Judicial District, ss:

Monday Durant, of lawful age, being first duly sworn, on his oath states that he is the guardian of Edith Durant, minor, that he has read the foregoing report and that the statements therein contained are true as he verily believes.

(Signed) MONDAY DURANT.

Subscribed and sworn to before me this 17th day of March, 1906.
(Signed) GEO. E. ROBINSON,
[SEAL.] *Notary Public.*

My commission expires Oct. 11, 1908.

42 Endorsed: Filed Mar. 29, 1906, R. P. Harrison, Clerk, Western Dist., I. T.

In the United States Court for the Western District of the Indian Territory, Sitting at Sapulpa.

No. 260.

In the Matter of the Estate of EDITH DURANT, Minor; MONDAY DURANT, Guardian.

Report of Guardian.

Comes now Monday Durant, Guardian of Edith Durant, a minor, and respectfully states to the court that Thomas A. Sanson, [Master] in Chancery, advertised that on the 5th day of March, 1906, he would receive sealed bids for an oil and gas lease on the lands of said minor Edith Durant, said lease to continue during the minority of the said minor.

That the land so advertised is as follows, to-wit:

The east half of the northwest quarter of section fifteen (15) and the south half of the southeast quarter of section three (3) all in Township seventeen (17) north Range twelve (12) east, Creek Nation, Indian Territory.

That on said fifth day of March, 1906, sealed bids were made by various parties and deposited with the said Master in Chancery, and at eight o'clock P. M. on said day the bids were opened in public by the said Master, Thomas A. Sanson.

That Robert W. Morrison, Charles W. S. Cobb, William J. Breene and Frank M. Breene bid as a bonus for the land of said minor the sum of thirty-four hundred ninety ($3490.00) Dollars.

That the Master found that the said bid was the highest and best bid for said land, and made an order awarding the lease to said bidders.

That on the 7th day of March, 1906, said Robert W. Marrison, Charles W. S. Cobb, William J. Breene and Frank M. Breene deposited with the Master aforesaid a certified check for the amount of their bid, three thousand four hundred ninety ($3490.00) Dollars, and on the said day said Master made an order directing this guardian to execute a lease for oil and gas upon the land of said minor to the above named bidders.

Filed Mar. 20, 1906.

R. P. HARRISON,
Clerk, Western Dist., I. T.

That on the 9th day of March, 1906, I, as guardian made
43 and executed an oil and gas lease upon the lands of Edith Durant described above to Robert W. Morrison and Charles W. S. Cobb of St. Louis, Missouri, William J. Breene of Oil City, Pa., and Frank M. Breene of Independence, Kansas. That said lease was executed upon the form prescribed by the Honorable Secretary of the Interior and a copy of same is attached hereto and made a part of this report.

That I attach hereto and make a part of this report a copy of the Master's receipt for the certified check to him for the amount paid as bonus.

Wherefore I ask that the lease aforesaid made and executed by me as guardian of Edith Durant, minor, on the 9th day of March, 1906, to Robert W. Morrison, Charles W. S. Cobb, William J. Breene and Frank M. Breene be fully approved by this court and that all the acts and things done by me in the execution of said lease as guardian be ratified and confirmed.

MONDAY DURANT,
Guardian of Edith Durant.

UNITED STATES OF AMERICA,
Indian Territory, Western Judicial District, ss:

Monday Durant, of lawful age, being first duly sworn, on his oath states that he is the guardian of Edith Durant, minor, that he has read the foregoing report and that all the statements therein contained are true as he verily believes.

MONDAY DURANT.

Subscribed and sworn to before me this 17th day of March, 1906.
[SEAL.] GEO. T. ROBINSON,
Notary Public.

My commission expires Oct. 11, 1908.

UNITED STATES OF AMERICA,
Indian Territory, Northern Judicial District, ss:

Frank M. Breene, being first duly sworn, on his oath says that he is one of the bidders for an oil and gas lease on the allotment of Edith Durant, minor. That he has been engaged in the oil business constantly for eighteen years last past, having operated in Pennsylvania, Ohio, Indiana, Kansas and Indian Territory. That he owns a large amount of oil drilling machinery and tools and that he is worth the sum of ten thousand dollars over and above all indebted-
ness and exemptions. And that the persons who joined in
44 this bid upon said land and your affiant now have on deposit in banks in Kansas and Indian Territory the sum of Seven Thousand Dollars subject to their check and available for any purpose whatever.

FRANK M. BREENE.

Subscribed and sworn to before me this 17th day of March, 1906.

ELSIE B. SHEA,
Notary Public.

[SEAL.]

My commission expires December 18th, 1909.

UNITED STATES OF AMERICA,
Indian Territory, Northern Judicial District, ss:

Frank M. Breene, being duly sworn on oath says that he is one of the lessees in an oil and gas lease on the Edna Durant, minor, allotment, Creek Nation, Indian Territory. That the other lessees are Robert W. Morrison, Charles W. S. Cobb and William J. Breene. That I am acquainted with the financial affairs of William J. Breene, who is my brother, that he has had large experience in the oil business and that he is worth over and above his debts and exemptions the sum of ten thousand dollars.

(Signed) FRANK M. BREENE.

Subscribed and sworn to before me this 17th day of March, 1906.

[SEAL.] (Signed) ELSIE B. SHEA,
Notary Public.

My commission expires December 18th, 1909.

Filed Mar. 29, 1906.

R. P. HARRISON,
Clerk, Western Dist., I. T.

STATE OF MISSOURI, *City of St. Louis, ss:*

Robert W. Morrison, being duly sworn, on oath states that he resides at Saint Louis, Missouri; that he has been engaged in business for the last past 33 years. That he is experienced in the oil business and is a producer of oil in the Indian Territory at the present time. That he is one of the lessees in the oil and gas lease upon the allotment of Edith Durant, minor; that he is responsible financially and able to comply with all the terms and requirement of said lease and with the rules of the Interior Department governing the same. That he is worth over and above all his debts, liabilities and exemptions more than fifty thousand (50000.00) dollars.

ROBERT W. MORRISON.

Subscribed and sworn to before me this 23rd day of March, 1906.

[SEAL.] RUDOLPH A. BUERMANN,
Notary Public.

My commission expires [October] 5th, 1906.

STATE OF MISSOURI, *City of St. Louis, ss:*

Charles W. S. Cobb, being duly sworn, on oath states that he resides at Saint Louis, Missouri; that he has been engaged in busi-

ness for the last past thirty years. That he is a producer of oil in the Indian Territory at the present time. That [—] is one of the lessees in the oil and gas lease upon the allotment of Edith Durant, minor; that he is responsible financially and able to comply with all the terms and requirement of said lease and with the rules of the Interior Department governing the same. That he is worth over and above all his debts, liabilities and exemptions more than fifty thousand ($50,000) dollars.

CHARLES W. S. COBB.

Subscribed and sworn to before me this 23rd day of March, 1906.
[SEAL.] RUDOLPH A. BUERMANN,
Notary Public.

My commission expires October 5th, 1906.

Filed Mar. 29, 1906.

R. P. HARRISON,
Clerk, Western Dist., I. T.

UNITED STATES OF AMERICA,
Indian Territory, Northern Judicial District, ss:

Frank M. Breene, being first duly sworn, on oath says that he is one of the bidders for an oil and gas lease on the allotment of Edna Durant, minor. That he has been engaged in the oil business constantly for the eighteen years last past, having operated in Pennsylvania, Ohio, Indiana, Kansas and Indian Territory. That he owns a large amount of oil drilling machinery and tools and that he is worth the sum of Ten Thousand Dollars over and above all indebtedness and exemptions. And that the persons who joined in this bid upon said land and your affiant now have on deposit in banks
46 in Kansas and Indian Territory the sum of Seven Thousand Dollars subject to their check and available for any purpose whatever.

(Signed) FRANK M. BREENE.

Subscribed and sworn to before me this 17th day of March, 1906.
[SEAL.] (Signed) ELSIE B. SHEA,
Notary Public.

My commission expires December 18th, 1909.

Filed Mar. 29, 1906.

R. P. HARRISON,
Clerk, Western Dist., I. T.

UNITED STATES OF AMERICA,
Indian Territory, Northern Judicial District, ss:

Frank M. Breene, being duly sworn, on oath says that he is one of the lessees in an oil and gas lease on the Edith Durant, minor, allotment, Creek Nation, Indian Territory. That the other lessees are Robert W. Morrison, Charles W. S. Cobb and William J. Breene.

That I am acquainted with the financial affairs of William J. Breene, who is my brother, that he has had large experience in the oil business and that he is worth over and above his debts and exemptions the sum of Ten Thousand Dollars.

FRANK M. BREENE.

Subscribed and sworn to before me this 17th day of March, 1906.
[SEAL.] ELSIE B. SHEA,
Notary Public.

My commission expires December 18th, 1909.

STATE OF MISSOURI, *City of St. Louis, ss:*

Robert W. Morrison, being duly sworn, on oath states that he resides at Saint Louis, Missouri; that he has been engaged in business for the last past 33 years. That he is experienced in the oil business and is a producer of oil in the Indian Territory at the present time. That he is one of the lessees in the oil and gas lease upon the allotment of Edna Durant, minor. That he is responsible financially and able to comply with all the terms and requirements of said lease and with the rules of the Interior Department governing the
47 same. That he is worth over and above all his debts, liabilities and exemptions more than Fifty Thousand ($50000.00) Dollars.

(Signed) ROBERT W. MORRISON.

Subscribed and sworn to before me this 23rd day of March, 1906.
[SEAL.] (Signed) RUDOLPH A. BUERMAN,
Notary Public.

My [commissione] expires October 5th, 1906.
Filed Mar. 29, 1906.

R. P. HARRISON,
Clerk Western Dist., I. T.

STATE OF MISSOURI, *City of St. Louis, ss:*

Charles W. S. Cobb, being duly sworn, on oath states that he resides at Saint Louis, Missouri; that he has been engaged in business for the last past thirty years. That he is a producer of oil in the Indian Territory at the present time. That he is one of the lessees in the oil and gas lease upon the allotment of Edna Durant, minor. That he is responsible financially and able to comply with all the terms and requirements of said lease and with the rules of the Interior Department governing the same. That he is worth over and above all his debts, liabilities and exemptions more than Fifty Thousand ($50000.00) Dollars.

(Signed) CHARLES W. S. COBB.

Subscribed and sworn to before me this 23rd day of March, 1906.
[SEAL.] RUDOLPH A. BUERMAN,
Notary Public.

My commission expires October 5th, 1906.

Endorsed: Filed Mar. 29, 1906. R. P. Harrison, Clerk, Western Dist., I. T.

And thereafter, on the 31st day of March, 1906, Chesley and Lindsey file- exceptions to reports of Master in Chancery, which said exceptions are in words and figures as follows:

In the United States Court for the Western District of Indian Territory, at Sapulpa, — Term, A. D. 1906.

No. 260. Probate.

In the Matter of EDNA DURANT, a Minor.

48 *Exceptions to the Master's Report for the Approval of an Oil and Gas Mining Lease to Robert W. Morrison and His Associates.*

Comes now Frank Chesley and L. W. Lindsey, by their attorneys, Mars & Mars, of Sapulpa, Indian Territory, and excepts to the report of the Master filed herein of the 26th day of March, 1906, recommending to this Honorable Court that the guardian, Monday Durant, executed an oil and gas mining lease upon the lands of this ward, Edna Durant, to-wit:

The northeast quarter of section eleven (11), township seventeen (17) north, range twelve (12) east, in the Creek Nation, Western District of Indian Territory, for the period of twelve (12) years, as follows:

I.

Because, The Master ordered that said lands be advertised to the highest bidder after the 18th day of January, A. D. 1906.

II.

Because, Prior to the making of said order and on the 16th day of December, 1905, the guardian, Monday Durant, under an order of the court of December 8th, 1905, executed an oil and gas mining lease to Frank Chesley and L. W. Lindsey, of Tulsa, Indian Territory, being the only existing rules and regulations of this court governing the leasing of minor heir lands in the Western District of Indian Territory.

III.

Because, The Master recommends that the guardian be ordered to execute an oil and gas mining lease to Robert W. Morrison.

IV.

Because, The guardia had not executed an oil and gas mining lease to Robert W. Morrison prior to or on the 18th day of January, 1906.

V.

Because, the lease executed by said guardian, Monday Durant, to Chesley and Lindsey, was taken in good faith, and in conformity to the rules and orders of this court, and the regulations of the Secretary of the Interior, prior to the additional order or orders requiring minor lands to be advertised to the highest and best bidder.

VI.

Because, The report of the Master deprives the original lessees of their vested rights and benefits under the order of this court of [D-cember] 8th, 1906.

49

VII.

Because, the report of the Master, recommending that an order be made upon the guardian requiring him to execute a lease to Robert W. Morrison is inequitable, unjust, and with misguise to protect the best interest of the ward of said guardian, which deprives the original lessees of the vested property rights in the execution of said lease which was taken in good faith and under every requirement, and in conformity to the order of this court, and that the original lessees have expended large sums of money, time and labor in the endeavor to [fu-fill] and meet the mandates of this court.

VIII.

Because, The testimony under the order of this court, December 8th, 1905, was taken and closed on January 18th, 1906, and certified checks for the amount of the bonus was placed in the hands of the Master, and the same being the highest and best bid and bonus offered for the lands of said minor at the time the lease was executed, and up to the time the testimony was taken and that the bid [of the] Laurel Oil and Gas Company for a bonus of twelve hundred and fifty (1250.00) dollars, and a royalty of [one-eight-,] was not made until after this lease had been submitted to the Master.

IX.

Because, The records show that the legal guardian expressed a preference in making the lease of said minor's lands, regardless of the amount of bonus bid, for the reason that the said Chesley & Lindsey developed the field and made it possible to lease said lands, and there was no opportunity to lease the same until after the Glenn well was brought in, and that the developments made by the lessees, Chesley and Lindsey, was taken into consideration as a part of the bonus in the execution of the lease, because of the proof that the lessees were operators and experienced men in the dev-loping of oil and gas and financially able to develop the land of said ward.

X.

Because, The Master exceeded his authority in advertising said lands, and receiving bids after the lands had been leased and the leases submitted to [th-] Master on the 18th day of January, 1906,

and causing said lands to be advertised to the highest and best bidder on the 5th day of March, 1906; said order of December 8th, 1905, referred the petition for the leasing of minor lands to the Master to examine, to take testimony, and to report his findings and conclusions together with the testimony to the court for its action.

MARS & MARS,
Attorneys for Chesley and Lindsey.

Filed May 31, 1906.

R. P. HARRISON,
Clerk Western Dist., I. T.

In the United States Court for the Western District of Indian Territory, March Term, A. D. 1906.

No. 260. Probate.

In the Matter of EDITH DURANT, a Minor, MONDAY DURANT, Guardian, Lee, I. T.

Exceptions to the Master's Report for the Approval of an Oil and Gas Mining Lease to Robert W. Morrison and His Associates.

Comes now Frank Chesley and L. W. Lindsey, by their attorneys, Mars & Mars, of Sapulpa, Indian Territory, and excepts to the report of the Master filed herein on the 26th day of March 1906, recommending to this Honorable Court that the guardian, Monday Durant, execute an oil and gas mining lease upon the lands of his ward, Edith Durant, to-wit:

The east half of the northwest quarter of section fifteen (15) and the north half of the southeast quarter of section three (3), township seventeen (17) north, range twelve (12) east, of the Creek Nation, Indian Territory, for the period of twelve (12) years, as follows:

I.

Because, The Master ordered that said lands be advertised to the highest and best bidder after the 18th day of January, A. D. 1906.

II.

Because, Prior to the making of said order and on the 16th day of December, 1905, the guardian, Monday Durant, under an order of the court of December 8th, 1905, executed an oil and gas mining lease to Frank Chesley and L. W. Lindsey, of Tulsa, Indian Territory, being the only existing rules and regulations of this court governing the leasing of minor heir lands in the Western District of Indian Territory.

III.

Because, The Master recommends that the guardian be ordered to execute an oil and gas mining lease to Robert W. Morrison, *et al.*

51 IV.

Because, The Guardian had not executed an oil and gas mining lease to Robert W. Morrison *et al.*, prior to [or on] the 18th day of January, 1906.

V.

Because, The lease executed by said guardian, Monday Durant, to Chesley and Lindsey, was taken in good faith, and in conformity to the rules and orders of this court, and the regulations of the Secretary of the Interior, prior to the additional order or orders requiring minor lands to be advertised to the highest and best bidder.

VI.

Because, The report of the Master, recommending that an order be made upon the guardian requiring him to execute a lease to Robert W. Morrison *et al.*, is inequitable, unjust and with misguise to protect the best interest of the ward of said guardian, which deprives the original lessees of the vested property rights in the execution of said lease which was taken in good faith and under every requirement, and in conformity to the order of this court, and that the original lessees have expended large sums of money, time and labor, in the endeavor to fulfill and meet the mandates of this court.

VII.

Because, The testimony under the order of this Court, December 8th, 1905, was taken and closed January 18th, 1906, and certified checks for the amount of the bonds was placed in the hands of the Master, and the same being the highest and best bid and bonus offered for the lands of said minor at the time the lease was executed and up to the time the testimony was taken, and that the bid of the Laurel Oil and Gas Company for a bonus of twelve hundred and fifty ($1250.00) Dollars, and a royalty of one-eighth, was not made until after this lease had been submitted to the Master.

IX.

Because, the records show that the legal guardian expressed a preference in making the lease of said minor's lands, regardless of the amount of bonus bid, for the reason that the said Chesley and Lindsey developed the field and made it possible to lease said lands, and there was no opportunity to lease the same until after the Glenn well was brought in, and that the development made by the lessees, Chesley and Lindsey, was taken into consideration as a part of the bonus in the execution of the lease, because of the proof that the lessees were operators and experienced men in the developing of oil and gas, and financially able to develop the lands of said ward.

52 X.

Because, The Master exceeded his authority in advertising said lands and receiving bids after the lands had been leased and the leases submitted to the Master on the 18th day of January, 1906,

and causing said lands to be advertised to the highest and best bidder on the 5th day of March, 1906, said order of December 8th, 1905, referred the petition for the leasing of minor lands to the Master to examine, to take testimony, and to report his findings and conclusions together with the testimony to the court for its action.

MARS & MARS,
Attorneys for Chesley & Lindsey.

Filed March 31, 1906.

R. P. HARRISON,
Clerk, Western Dist., I. T.

And on the same day, the 31st day of March, 1906, Robert W. Morrison, *et al.*, filed a motion to strike the exceptions to the report of the Master in Chancery from the files, which said motion is in words and figures as follows:

In the United States Court for the Western Judicial District of the Indian Territory, Sitting at Sapulpa, March Term, 1906.

No. 260.

In the Matter of the Estate of EDNA DURANT, a Minor, MONDAY DURANT, Guardian.

Probate.

Comes now Robert W. Morrison, Charles W. S. Cobb, William J. Breene and Frank M. Breene and respectfully move the court to strike from the files the exceptions to the Master's report, filed by Frank Chesley and L. W. Lindsey, on March 31, 1906, and for ground therefor state that the record in this case shows that the Master's report was filed on the 26th day of March, 1906, and that five days had elapsed since the filing of said report and before any exceptions thereto were filed; that said exceptions are not filed within the time fixed by the statute.

SHEA, SHEA & MONTGOMERY,
Attorneys for Morrison et al.

Endorsed: No. 260. Probate. Motion to strike Exceptions to Master's Report. Western Dist., Ind. Ter. Filed in open court March 31, 1906. R. P. Harrison, Clerk U. S. Courts. Shea & Montgomery.

And thereafter, on the 11th day of June, 1906, the Judge signed orders approving oil and gas lease, which said orders are in words and figures as follows:

53 In the United States Court for the Western District of the Indian Territory, Sitting in Probate at Sapulpa.

No. 260, [Probate].

In the Matter of the Estate of EDNA DURANT, a Minor, MONDAY DURANT, Guardian.

Order Approving and Confirming Lease for Oil and Gas.

Now comes Monday Durant, Guardian of Edna Durant, Minor, in the above entitled cause, and files his report as such Guardian, stating that in pursuance of the direction of the Master in Chancery herein, the Honorable Thomas A. Sanson, he the said Monday Durant, Guardian, did on the 9th day of March, 1906, execute an Oil and Gas Lease upon the lands of his ward, Edna Durant, described as follows, to-wit: The Northeast Quarter (¼) of Section eleven (11), Township seventeen (17) North, Range twelve (12) East, Creek Nation, Indian Territory, to Robert W. Morrison and Charles W. S. Cobb and John E. McKinney of St. Louis, Mo., William J. Breene of Oil City, Pa., and Frank M. Breene of Independence, Kansas.

That said lease is upon the form and executed in the manner provided by the Interior Department, and it appearing to the satisfaction of the Court from the report of the Master in Chancery filed herein that said land has been leased to the highest and best bidder therefor, and that it is for the best interest of said minor and her estate that this lease should be approved;

It is therefore ordered, adjudged and decreed by the Court that the lease executed by Monday Durant, Guardian of Edna Durant, Minor, on the 9th day of March, 1906, to the above named lessees be and the same is hereby in all things approved, ratified and confirmed.

Done this 11th day of June, 1906, the same being a day of the May term of the United States Court for the Western District of the Indian Territory, sitting at Sapulpa.

LOUIS SULZBACHER,
Judge of the United States Court,
Western District, Indian Territory.

West Dist. Ind. Ter. Filed in open Court, Jun- 14, 1906.

R. P. HARRISON,
Clerk U. S. Courts.

54 In the United States Court for the Western District of the Indian Territory, Sitting in Probate at Sapulpa.

No. 260, Probate.

In the Matter of the Estate of EDITH DURANT, a Minor, MONDAY DURANT, Guardian.

Order Approving and Confirming Lease for Oil and Gas.

Now comes Monday Durant, Guardian of Edith Durant, minor, in the above entitled cause, and files his report as such guardian, stating that in pursuance of the direction of the [Mastern] in Chancery herein, the Honorable Thomas A. Sanson, he the said Monday Durant, guardian, did on the 9th day of March, 1906, execute an Oil and Gas Lease upon the lands of his ward, Edith Durant, described as follows, to-wit: The North half (½) of the southeast Quarter (¼) of Section three (3) and the east half (½) of the northwest Quarter (¼) of Section fifteen (15), Township seventeen (17) North, Range Twelve (12) East, Creek Nation, Indian Territory, to Robert W. Morrison, Charles W. S. Cobb and John A. McKinney of St. Louis, Mo.; William J. Breene of Oil City, Pa., and Frank M. Breene of Independence, Kansas.

That said lease is upon the form and executed in the manner provided by the Interior Department, and it appearing to the satisfaction of the Court from the report of the Master in Chancery filed herein, that said land has been leased to the highest and best bidder therefor and that it is for the best interest of said minor and her estate that this lease should be approved;

It is therefore Ordered, Adjudged and Decreed by the Court that the lease executed by Monday Durant, Guardian of Edith Durant, minor, on the 9th day of March, 1906, to the above named lessees be and the same is hereby in all things approved, ratified and confirmed.

Done this 11th day of June, 1906, the same being a day of the May term of the United States Court for the Western District of the Indian Territory, sitting at Sapulpa.

LOUIS SULZBACHER,
Judge of the United States Court,
Western District, Indian Territory.

Western Dist. Ind. Ter. Filed in open Court Jun- 14, 1906.

R. P. HARRISON,
Clerk U. S. Courts.

And thereafter, on the 12th day of June, 1906, Laurel Oil & Gas Co. file motion for leave to bid, which said motion is in words and figures as follows:

55 In the United States Court within and for the Western District of the Indian Territory, Sitting at Sapulpa.

Probate, 260.

In re EDITH DURANT, a Minor, MONDAY DURANT, Guardian.

Motion.

Comes now the Laurel Oil & Gas Co. and moves the court that it be granted leave to bid on the sale of the oil and gas mining lease on the allotment of said minor and file with this court a certified check as the cash bonus bid, and that said cash bonus bid will be in a sum not less than $8,000.00 and one-tenth royalty.

LAUREL OIL & GAS CO.,
By FRED PFENDLER,
Its Attorney.

6-15-1906.—Received above check.

LAUREL OIL & GAS CO.,
By its Attorney, FRED PFENDLER.

Endorsed: *In re* Probate 260. Edith Durant, Minor. Monday Durant, guardian. Motion for leave to Bid. Western Dist. Ind. Ter. Jan. 12, 1906. Filed in open Court. R. P. Harrison, Clerk, U. S. Courts. Fred Pfendler, Attorney for Laurel Oil & Gas Co.

And thereafter, on the 12th day of June, 1906, the Court made the following order, which said order was filed on the 13th day of June, 1906, and is in words and figures as follows:

Order June 12, 7 P. M.

Upon the announcement by the court this afternoon that, although these lease matters were still in the breast of the court, no new sale should be made on tomorrow morning, the court expressed its reasons, stating that it feared that bids would only be raised in isolated cases, that doubtful territory would be abandoned, and therefore the lands of some minors ignored, and they would not receive any bonus. Also fearing that, perhaps, combinations would be formed, and, in the end, less money bid than is now deposited.

These doubts, however, have been removed when one party guaranteed that they would offer, at least, twenty per cent. additional on all leases, and another party presented certified checks which he said would add to all of the present bids, pro rata, which would make almost sixty per cent. more than the bonus now offered, the court, as then stated, deemed it proper for the best interests of the
56 minor that the present bids should be changed, and new bids received and the land offered to the highest bidder.

Provided, however, that the parties who desire to bid upon these leases, and who make these guarantees, must file with the Master in Chancery a written guarantee to this effect, accompanied by a certified check covering the amounts, equal to the highest bonuses already bid, together with additional sums offered, and agree that they will bid upon each separate lease to the amount equal to the highest bid now received by the Master, together with an additional pro rata amount of the difference offered, being not less than fifty per cent. of the present amount.

It having been represented in open court, by the attorneys for Francis M. Selby and Robert Morrison and his associates, that they doubted the court's authority to set aside its former order and to cancel the orders for leases already signed, that they will apply to the Court of Appeals for a supersedeas, and asking the court that the sales announced for nine o'clock a. m. on the 13th be postponed until 3 p. m., it is ordered that the Master shall open the sale at nine a. m. tomorrow, but to offer for sale at that time only the leases in No. 110, Jonah Yellowhead, and No. 263, Joseph F. Berryhill, and then that he shall adjourn his sale until three p. m. the same date.

LOUIS SULZBACHER, *Judge.*

And thereafter, on the 13th day of June, 1906, [on] order setting aside the order of June 11 and a telegram are filed, which said order and telegram are in words and figures as follows:

No. 260, Probate.

In the Matter of EDITH DURANT and EDNA DURANT, Minors, MONDAY DURANT, Guardian.

It is considered and ordered by the Court that the order made herein on June 11, 1906, authorizing and ordering the guardian to enter into an oil and gas mining lease with Robert W. Morrison and his associates, be and the same is hereby set aside for the reason that a much better lease can be made and a much higher bonus obtained.

LOUIS SULZBACHER, *Judge.*

57 Endorsed: Western Dist. Ind. Ter. Filed in open Court Jun- 13, 1906. R. P. Harrison, Clerk U. S. Courts.

The Western Union Telegraph Company.

Received at KM BO UT 43 Paid.

3 Extra in Signature.

McALESTER, I. T., *June 13th,* 1906.

Hon. Louis Sulzbacher, Sapulpa, I. T.:

Earnestly protest against any entry in all lease cases today until after my application is heard by Court of Appeals Judge Lawrence

will grant supersedeas as soon as certified copy of your record arrives here we have ordered the record.

J. J. SHEA,
R. B. THOMPSON.—206 *P. M.*

Endorsed: Western Dist. Ind. Ter. Filed in open Court Jun- 13, 1906. R. P. Harrison, Clerk U. S. Courts.

And thereafter, on [th-] 14th day of June, 1906, the same being a day of the May 1906 term of said court, a motion by R. W. Morrison *et al.* to set aside *nunc pro tunc* order and other orders is filed herein, which said motion is in words and figures as follows:

In the District Court of the United States in and for the Western District, Sitting at Sapulpa.

No. 260.

In the Matter of the Guardianship of EDITH DURANT and EDNA DURANT.

Probate.

Comes now Robert W. Morrison, Charles W. S. Cobb, William J. Breene, Frank M. Breene and John E. McKinney and respectfully move the Court to set aside the *nunc* [*protunc*] order of this Court entered on the 15th day of June 1906, for the reason that said order was not made on June 11th, and was not made until this day, and does not state the facts in relation to the record made on June 11, 1906, because no such order was made on that date and no order of any kind setting aside the order confirming the leases in this case to your petitioners was made on that date; that said *nunc* [*protunc*] order incorrectly states the record made at this term of Court and makes now a record which has no foundation in fact and was not made as recorded in said order.

58 Your petitioners further pray that all proceedings had and done in relation to the sale of the oil and gas leases of the two minors Edith and Edna Durant, had and done on June —, 1906, be set aside and held for naught, and for grounds thereof state, that prior to said sale and on June 11, 1906, this Court entered a final order and decree in these cases ratifying, approving and confirming the leases theretofore executed by Monday Durant, guardian to these your petitioners; that said order became a part of the solemn record of this Court and that this Court has no power to arbitrarily and without notice to these your petitioners to set aside said order, that this Court has no power to set aside this order for mere inadequacy in price for which said oil leases were sold.

Your petitioners further state that these leases were sold to them on March 5, 1906, and at that time there was but one or two wells in this vicinity, neither of them large or extraordinary wells and at said date your petitioners paid for said leases the full and adequate

value thereof, and that when said leases were executed and brought into this Court and confirmed by this Court as the records show, that these your petitioners then became the owners of said oil and gas leases and had vested rights therein that could only be taken away from them by due provision of the law, and not [arbitrarily] as has been attempted by this Court.

Your petitioners except to the Master's report filed herein and for grounds thereof state that said Master had no right or authority to sell said leases on June 13, 1906, for the reason that the rule of this Court provides that before any sale of minor lands for oil and gas shall be had, that the guardian shall advertise the same for a period of two weeks in some newspaper published in the Recording District in which said sale is to be held, and that this was not done, and that said leases were sold without advertising and without notice, and that said Master had no right or legal authority to sell or dispose of same for these and the reasons heretofore stated.

The affidavit marked "Exhibit A and B" are made a part of these exceptions.

Respectfully submitted,

JOHN J. SHEA,
Attorney for Petitioners.

Western Dist. Ind. Ter. Filed in open Court Jun- 14, 1906.

R. P. HARRISON,
Clerk U. S. Courts.

UNITED STATES OF AMERICA,
Indian Territory, Western Judicial District, ss:

59 I, John F. Egan, being first duly sworn on my oath say that I am acquainted with the oil field southeast of Sapulpa, known as the "Glenn" field, and that I was also acquainted with said field on March 5, 1906, and that I knew of the developments in and about said "Glenn" well and in that vicinity, and that on March 5, 1906, the Number One (1) well on the "Glenn" farm and the Number One (1) well on the Grayson farm were the only wells in the vicinity or near the lands of Edith and Edna Durant, and that neither of said wells was a large producer, and that the large wells now in the vicinity of the lands of these minors were brought in between said 5th day of March and this date.

JOHN F. EGAN.

Subscribed and sworn to before me this 14th day of June, 1906.

R. P. HARRISON, *Clerk,*
[SEAL.] By OTIS LORTON, *Deputy.*

EXHIBIT "A."

Western Dist. Ind. Ter. Filed in open Court Jun- 14, 1906.
R. P. HARRISON,
Clerk U. S. Courts.

In the District Court of the United States [*and*] and for the Western District, Sitting at Sapulpa.

No. 260.

In the Matter of the Guardianship of EDITH DURANT and EDNA DURANT.

Probate.

Comes now Robert W. Morrison, Charles W. S. Cobb, William J. Breene, Frank M. Breene and John E. McKinney and except to the *nunc pro tunc* order of the Court of June 13th, setting aside the order confirming the oil and gas leases to these your petitioners by Monday Durant, guardian, and move the Court to set aside said order and to reinstate the order of June 11, 1906, approving and confirming oil and gas leases upon the lands of said minors in these your petitioners.

JOHN J. SHEA,
Attorney for Petitioners.

Western Dist. Ind. Ter. Filed in open Court, Jun- 14, 1906.
R. P. HARRISON,
Clerk U. S. Courts.

UNITED STATES OF AMERICA,
Indian Territory, Western Judicial District, ss:

I, John J. Shea, being first duly sworn on my oath say that
60 I am the attorney of record representing Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene, who were the highest bidders for an oil and gas lease upon the lands of Edith and Edna Durant, on March 5, 1906; that I was present in this Court on June 11, 1906, when the order rectifying, approving and confirming said lease was made and signed by this Court, and that on said day in the afternoon there was some general talk by the Judge from the Bench as to what might possibly be done but that no order was made on June 11th, 1906, setting aside said confirming order; that on the evening of June 11, 1906, I examined the Probate Record of this Court and at that time there was no entry thereon setting aside said confirming order; that I was present during the greater part of the day of June 11, 1906, and that I know of my own knowledge that this Court made no such order as is now declared to have been made in the *nunc pro tunc* order now on file in this case.

I further say that I was present in this Court on June 12th, 1906, and that on the afternoon of said day the Honorable Louis Sulzbacher read from the bench an opinion again adhering to the former order confirming the leases of Edith and Edna Durant, minors, and Monday Durant, guardian, to these your petitioners, and that said Court did not at that time, June 12, 1906, make or order any such order as is now declared to have been made in the *nunc pro tunc* order filed herein.

I will further say [that I] was present in the evening of June 12, 1906, and that no order was then made setting aside the order confirming the leases herein referred to by your petitioners; and I further say that the said *nunc pro tunc* order does not set up a correct record of the proceedings had and done in this Court for the reason that no such proceedings were ever had or done by this Court until some time about noon Wednesday, June 13, 1906; and that said order if entered at all should be entered as of that date showing the fact and the record as it actually occurred. And your petitioners respectfully object to the record in this case reciting in said *nunc pro tunc* order matters and things that were not done and never occurred at the time set forth in said order and ask that the same be corrected.

Respectfully submitted,

JOHN J. SHEA.

Subscribed and sworn to before me this 14th day of June, 1906.

R. P. HARRISON, *Clerk*,
[SEAL.] By OTIS LORTON, *Deputy*.

61 Western Dist. Ind. Ter. Filed in open Court Jun- 14, 1906.

R. P. HARRISON,
Clerk U. S. Courts.

In the District Court of the United States, Sitting at Sapulpa.

In re Guardianship of EDNA DURANT, EDITH DURANT; MONDAY DURANT, Guardian.

Motion to Set Aside Order Confirming Lease to Laurel Oil and Gas Co. and Galbreath Oil & Gas Co.

Comes now Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene, and move the court to set aside the order made on the 14th day of June, 1906, confirming the Master's sale of the leases of Edna and Edith Durant, and for grounds thereof state,

That said order was made in advance of the filing in this court the Master's report of the proceedings had and done in the sale of said leases on June 14th, 1906, and that said report is not yet filed.

That, under the law, your exceptants have three days in which

to file exceptions to the Master's report, after the same is filed in court.

That these exceptants have not seen said report and have not had access to the same.

That in this same case this court gave the exceptants to the original report of the Master herein five days in which to file exceptions.

That these exceptants were refused the right by the court to file their exceptions to the action of the Master before said order was made, although ready, and was refused the right to file their exceptions.

JOHN J. SHEA,
Attorney for Exceptants.

Endorsed: Filed Jun- 14, 1906. R. P. Harrison, Clerk, Western Dist., I. T.

Western Dist. Ind. Ter. Filed in open Court Jun- 14, 1906.
R. P. HARRISON,
Clerk U. S. Courts.

No. 260. Probate.

In the District Court of the United States in and for the Western District, Sitting at Sapulpa.

In the Matter of the Guardianship of EDITH DURANT and EDNA DURANT.

Comes now Robert W. Morrison, Charles W. S. Cobb, William J. Breene, Frank M. Breene and John E. McKinney, and re-
62 spectfully pray the Court that an appeal be allowed in this case from the refusal to set aside the order canceling and holding for naught the order confirming the oil and gas lease executed by Monday Durant, guardian to these your petitioners, and they pray that an appeal be allowed by this Honorable Court to the United States Court of Appeals in and for the Indian Territory.

Your petitioners further pray that this Court fix the amount of bond to be given for the purpose of superseding the said above orders.

And your petitioners further pray that the Court fix the terms, conditions and amount of said bonds.

Respectfully submitted, JOHN J. SHEA,
Attorney for Petitioners.

Western Dist. Ind Ter. Filed in open Court Jun- 14, 1906.
R. P. HARRISON,
Clerk U. S. Courts.

Whereupon the court doth overrule all said motions, affidavits and exceptions, to which Robert L. Morrison and associates Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene, at the time except, and pray an appeal from the orders of the court

setting aside confirmation of leases and upon refusal to sustain exceptions and set aside order cancelling and vacating orders of confirmation; and asks the court to grant supersedeas and fix bond, stating amounts and conditions of the same, which said prayer of appeal is by the court granted so far as can be done upon interlocutory orders, but the court refuses to grant supersedeas and fix the amount of the bond. The reports of the Master in Chancery of the sale of the lease as to Edith Durant and Edna Durant are filed, which said reports are in words and figures as follows:

In the United States Court in the Indian Territory, Western District at Sapulpa.

No. 260. Probate.

In the Matter of EDNA DURANT, Minor, MONDAY DURANT, Guardian.

Master's Report.

To the Honorable Louis Sulzbacher, Judge of said Court:

Comes now Thomas A. Sanson, Master in Chancery of this Court, who was directed by an order of this Court duly made and
63 entered of record June 11, 1906, to offer for sale and resell the oil and gas mining lease upon the land of this minor, to-wit:

Northeast quarter of section 11, township 17 north, range 12 east, Creek Nation, Indian Territory, at public sale to the highest and best bidder therefor, on Wednesday, June 13, 1906, at 3 o'clock in the afternoon, such sale to take place at the United States Court House at Sapulpa, in this District, and begs leave to make the following report:

I.

Public notice of such resale was announced in my presence publicly by the Court on Monday, June 11, 1906, and again on Tuesday, June 12, 1906, and I attended at the United States Court House at Sapulpa in this District on June 13, 1906, at 3 o'clock in the afternoon and offered for sale in pursuance of such order, an oil and gas mining lease upon the above described land of this minor in accordance with the rules and regulations of the Honorable Secretary of the Interior, at public sale to the highest and best bidder therefor.

A great number of bids were received for this lease as is more [ful-y] shown by my general report filed herein, but the highest and best bid offered was that of Galbreath Oil & Gas Co., who bid for such lease a bonus of $2460.00 and a 1-10 royalty and that being the highest and best bid offered, I then and there declared Galbreath Oil & Gas Co. to be the higest and best bidder and awarded such lease to it.

At a former sale held by me in which this lease was offered, the highest and best bid received was a bonus of $1640.00, which sale

was set aside by the Court because of the inadequacy of the bonus offered.

I further certify that said Galbreath Oil & Gas Co. have deposited with me a certified check in the sum of $2560.00, being the amount of bonus bid by them on this lease, together with the additional sum of $100.00 on account of court costs and commissions and that I hold this check subject to the further order of the Court herein.

Recommendations.

I therefore recommend that Monday Durant, guardian of said minor, Edna Durant, be authorized and directed to execute an oil and gas mining lease upon the said land of this minor to Galbreath Oil & Gas Co. in accordance with the rules and regulations of the Honorable Secretary of the Interior and that he report such
64 action to the Court forthwith and that upon the execution of such lease and the report of its execution by the guardian, that the same be ordered approved by the Court.

I further recommend that the guardian, Monday Durant, be ordered and directed to make and execute a new bond herein as such guardian in the sum of $4920.00 and a lease bond in the sum of $500.00 such bonds to be approved by the Master in Chancery and Clerk of this Court.

All of which is respectfully submitted.

____ ____,
Master in Chancery.

Dated June 14, 1906.

Western Dist. Ind. Ter. Filed in open Court Jun- 14, 1906.
R. P. HARRISON,
Clerk U. S. Courts.

No. 260. Edna Durant, minor. Monday Durant, Guardian. Master's Report.

In the United States Court in the Indian Territory, Western District, at Sapulpa.

No. 260. Probate.

In the Matter of EDITH DURANT, Minor, MONDAY DURANT, Guardian.

Master's Report.

To the Honorable Louis Sulzbacher, Judge of said Court:

Comes now Thomas A. Sanson, Master in Chancery of this Court, who was directed by an order of this Court duly made and entered of record June 11, 1906, to offer for sale and resell the oil and gas mining lease upon the land of this minor, to-wit: East half of northwest quarter of section 15, township 17 north, range 12 east, and north half of the southeast quarter of section 3, township 17 north,

range 12 east, Creek Nation, Indian Territory, at public sale to the highest bidder therefor, on Wednesday, June 13, 1906, at 3 o'clock in the afternoon such sale to take place at the United States Court House at Sapulpa in this District, and begs leave to make the following report:

I.

Public notice of such resale was announced in my presence publicly by the Court on Monday, June 11, 1906 and again on Tuesday, June 12, 1906, and I attended at the United States Court House at Sapulpa in this District on June 13, 1906, at 3 o'clock in the afternoon and offered for sale in pursuance of such
65 order, an oil and gas [—] [ance] with the rules and regulations of the Honorable Secretary of the Interior, at public sale to the highest and best bidder therefor.

The land of this minor was offered in two pieces, the first piece offered being the east half of the northwest quarter of section 15, township 17 north, range 12 east, Creek Nation, Indian Territory. A great many bids were received for this lease as is more fully shown by my general report filed herein, but the highest and best bid offered was that of Galbreath Oil & Gas Co., who bid for such lease a bonus of $16,800.00 and a 1-10 royalty and that being the highest and best bid offered, I then and there declared Galbreath Oil & Gas Co. to be the highest and best bidder and awarded such lease to it.

The remainder of the land of this minor was then offered, to-wit: The north half of the southeast quarter of section 3, township 17 north, range 12 east, Creek Nation, Indian Territory. A great many bids were received for this lease as is more fully shown by my general report filed herein, but the highest and best bid offered was that of Laurel Oil & Gas Co., who bid for such lease a bonus of $2000.00 and a 1-10 royalty and that being the highest and best bid offered for this tract, I then and there declared Laurel Oil & Gas Co. to be the highest and best bidder and awarded such lease to it.

At a former sale held by me in which a lease for all of the land of this minor was offered, the highest and best bid received was a bonus of $3,490.00, which sale was set aside by the Court because of the inadequacy of the bonus offered.

I further testify that Galbreath Oil & Gas Co. have deposited with me a certified check in the sum of $17,100.00, being the amount of bonus bid by them on the lease awarded to them, together with the additional sum of $300.00 on account of court costs and commissions and that I hold this check subject to the further order of the Court herein.

I further certify that Laurel Oil & Gas Co. have deposited with me a certified check in the sum of $2100.00, being the amount of bonus bid by them on the lease awarded to them together with the additional sum of $100.00 on account of court costs and commissions and that I hold this check subject to further order of the Court herein.

Recommendations.

I therefore recommend that Monday Durant, guardian of said minor, Edith Durant, be authorized and directed to execute an oil and gas mining lease upon the land of his ward described
66 as follows: East half of northwest quarter of section 15, township 17 north, range 12 east, Creek Nation, Indian Territory, to Galbreath Oil & Gas Co. in accordance with the rules and regulations of the Honorable Secretary of the Interior and that he report such action to the Court [for-hwith] and that upon execution of such lease and the report of its executor by the guardian, that the same be ordered approved by the Court.

I further recommend that Monday Durant, guardian of said minor, Edith Durant, be authorized and directed to execute an oil and gas mining lease upon the land of his ward described as follows: The north half of the southeast quarter of section 3, township 17 north, range 12 east, Creek Nation, Indian Territory, to Laurel Oil & Gas Co. in accordance with the rules and regulations of the Honorable Secretary of the Interior and that he report such action to the Court forthwith and that upon the execution of such lease and the report of its execution by the guardian, that the same be ordered approved by the Court.

I further recommend that the guardian, Monday Durant, be ordered and directed to make and execute a new bond herein as such guardian in the sum of $37,600.00 and a lease bond in the sum of $2000.00, such bonds to be approved by the Master in Chancery and Clerk of this Court.

All of which is respectfully submitted.

——— ———,
Master in Chancery.

Dated June 14, 1906.

Western Dist. Ind. Ter. Filed in open Court June 14, 1906.

R. P. HARRISON,
Clerk U. S. Courts.

No. 260. Edith Durant, minor. Monday Durant, guardian. Master's Report.

Which said reports of sale by the Master in Chancery are approved by the court. Whereupon Robert Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene move the court to enter the time of the filing of the report of sale, giving the hour of the day, and also ask to be given three days in which to file exceptions to the report of sale of Master in Chancery, which said motion and request are by the court overruled and denied Robert Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene at the time except to the approval of the reports of sale of the Master in Chancery. Whereupon the court orders the clerk to return the check for $8,000.00 to the Laurel Oil & Gas Company filed herein June 12, 1906, which said order is in words and figures as follows:

67 In the United States Court within and for the Western District of the Ind. Ter. at Sapulpa.

Probate No. 260.

In re EDITH DURANT, a Minor, MONDAY DURANT, Guardian.

Order Allowing Laurel Oil & Gas Company to Withdraw Certified Check.

It appearing to the court that heretofore, to-wit: on June 12th, 1906, the Laurel Oil & Gas Co. filed with the Clerk of this Court a certified check on the Farmers' & Merchants' Bank of Sapulpa, I. T., for the sum of $8,000.00 payable to Guardian of Edith Durant to cover its preferred bid for an oil and gas mining lease upon the lands of Edith Durant, a minor, and that on June 13th, 1906, a higher bid was offered therefor, it is by the court considered, adjudged and ordered that the certified check heretofore recited and described by the Clerk of this Court — returned to the Laurel Oil & Gas Co.

LOUIS SULZBACHER, *Judge.*

Endorsed: 260, Probate. Edith Durant, Minor. Monday Durant, Guardian. Order to release check. Approved June 14, 1906. Thomas A. Sanson, Master. Western Dist. Ind. Ter. Filed in open Court Jun. 14, 1906. R. P. Harrison, [Clerke] U. S. Courts.

On the same day, the 14th [day of] June, 1906, a petition to Lease, Order to Lease, Report of Guardian leasing land of ward, Order Confirming lease, Confirmatory Order and Order and Decree of Court are filed in open court herein, which are in words and figures as follows:

In the United States Court within and [for the] Western District of the Ind. Ter.

No. 260, Probate.

EDITH DURANT, a Minor, MONDAY DURANT, Guardian.

Petition to Lease Ward's Land for Oil and Gas Purposes.

Comes Monday Durant, Guardian of Edith Durant, a minor, and states to the Court that the following lands of his ward, to-wit:

North half of southeast quarter of section three, township seventeen north, range twelve east, Creek Nation, Ind. Ter., same
68 being eighty acres more or less according to the government survey thereof, were on June 13th, 1906, by order and direction of this Court offered by Thos. A. Sanson, Master in Chancery and Probate Commissioner for lease for oil and gas mining purposes; said offer being at public auction in the United States Court Room

in the United States Court House in Sapulpa, Western District, I. T., at 3 o'clock P. M., at which auction the Laurel Oil and Gas Company offered for an oil and gas mining lease upon said lands a cash bonus of $2000.00 and royalty of one-tenth of the oil produced to run from this date until the 13th day of June, 1917, which said cash bonus has been duly deposited with Thos. A. Sanson.

Wherefore the said guardian prays that he be authorized to lease said lands for oil and gas mining purposes to the Laurel Oil and Gas Company from date hereof until the 13th day of June, 1917, upon the terms above set out and under the rules and regulations of the Honorable Secretary of the Interior.

MONDAY DURANT, *Guardian.*

I, Monday Durant, being first duly sworn upon oath state that I am the Guardian of Edith Durant, a minor, that I signed the foregoing petition and that the matters and things therein set forth are true.

Subscribed and sworn.

JAMES J. MARS,
Notary Public.

My commission expires May 7th, 1908.

Western Dist. Ind. Ter. Filed in open Court Jun- 14, 1906.

R. P. HARRISON,
Clerk U. S. Courts.

In the United States Court within and for the Western District of the Indian Territory, at Sapulpa.

No. 260, Probate.

In re EDITH DURANT, a Minor, MONDAY DURANT, Guardian.

Order Authorizing Guardian to Lease Land of Ward.

On this 14th day — comes on to be heard the petition of Monday Durant, guardian of Edith Durant, a minor, for authority to make an oil and gas mining lease to the Laurel Oil and Gas Company of the following lands of his ward, to-wit: North one-half of the
69 southeast quarter of section three, township seventeen north, range twelve east, I. M. Creek Nation, Ind. Ter., same being 80 acres more or less according to the government survey thereof, from date hereof until 13th day of June, 1917, for a cash bonus of $2000.00, which cash bonus has been duly deposited with Thos. A. Sanson, Master in Chancery and Probate Commissioner and a royalty of one-tenth of the oil produced, under the rules and regulations of the Honorable Secretary of the Interior. And having examined said petition and it appearing that said terms are the highest and best bid received and being well and sufficiently advised in the premises it is by the Court considered, adjudged and ordered that the said

Guardian Monday Durant be and he is hereby directed and authorized to execute an oil and gas mining lease to the Laurel Oil and Gas Company upon the lands of his ward, Edith Durant, hereinbefore described and upon the terms hereinbefore recited.

LOUIS SULZBACHER, *Judge.*

June 14, 1906.

Western Dist. Ind. Ter. Filed in open Court Jun- 14, 1906.

R. P. HARRISON,
Clerk U. S. Courts.

In the United States Court in the Indian Territory, Western District, at Sapulpa.

No. 260. Probate.

In the Matter of EDITH DURANT, a Minor, MONDAY DURANT, Guardian.

Report of Guardian Leasing Lands of His Ward.

And now the guardian herein, Monday Durant, respectfully represents to the Court that pursuant to an order of this Court, made and entered of record, authorizing and directing him to execute an oil and gas mining lease upon the lands of his said ward, Edith Durant, as set out and more particularly described in his petition to the Court for the leasing of his said ward's lands, he did on the 14th day of June, 1906, execute an Oil and Gas Mining Lease to the Galbreath Oil and Gas Company of Tulsa, Indian Territory, upon the lands of his said ward Edith Durant, a copy of said lease having been filed and marked "Exhibit A."

MONDAY DURANT, *Guardian.*

Subscribed and sworn to before me on this the 14th day of June, 1906.

[SEAL.] JAMES J. MARS,
Notary Public.

My commission expires May 7, 1908.

70 260 Probate. *In re* Estate of Edith Durant, a minor, Monday Durant, guardian. Report of Guardian Leasing Lands of Ward. Western District, Ind. Ter. Filed in open Court, June 14, 1906. R. P. Harrison, Clerk, U. S. Courts.

In the United States Court within and for the Western District of the Indian Territory, at Sapulpa.

260. Probate.

In re EDITH DURANT, a Minor, MONDAY DURANT, Guardian.

Order Confirming and Approving Lease by Monday Durant, Guardian.

On this 14th day of June, A. D. 1906, Monday Durant, Guardian herein, presents to the Court an oil and gas mining lease executed by him under the order and authority of the Court upon the following lands of his ward, to-wit: North half of southeast quarter of section three, township seventeen north, range twelve east, Creek Nation, Indian Territory, containing eighty acres more or less according to the government survey thereof to the Laurel Oil and Gas Company of Indiana, Pa., from June 14th, 1906, to the 13th day of June, 1917, for a cash bonus of two thousand ($2000.00) Dollars duly deposited with Thos. A. Sanson, Master in Chancery and Probate Commissioner and a royalty of one-tenth of the oil produced; and it appearing that said lease is in conformity with the order, direction and authority of the Court, and the Court being well and sufficiently advised in the premises it is by the Court considered, adjudged and ordered that said lease be and the same is in all things hereby ratified, approved and confirmed; and it is further ordered that said Thos. A. Sanson deposit said cash bonus of $2000.00 in some solvent bank in the Western District, Indian Territory, and keep until satisfactory proof is given him that said lease has been duly approved by the Honorable Secretary of the Interior, and thereupon by him paid over to the said guardian of Edith Durant, and it is further ordered that Laurel Oil and Gas Company pay into the hands of said Thos. A. Sanson within ten days the sum of $100.00 to cover the expenses attendant upon the making of this lease.

LOUIS SULZBACHER,
Judge, Western District, I. T.

Western Dist. Ind. Ter. Filed in open Court Jun- 14, 1906.

R. P. HARRISON,
Clerk U. S. Courts.

In the United States Court for the Western District of the Indian Territory, at Sapulpa.

71 Probate. No. 260.

In re EDITH DURANT, a Minor, MONDAY DURANT, Guardian.

Confirmatory Order.

On this the 14th day of June, 1906, Monday Durant, Guardian herein, presents to the Court an oil and gas mining lease upon the lands, executed by him under the order and authority of the Court, upon the following lands of his ward, to-wit:

The east half (½) of the northwest quarter (¼) of section fifteen (15) township seventeen (17) north, range twelve (12) east, of the Creek Nation, Indian Territory, containing eighty (80) acres more or less, according to the government survey thereof, to the Galbreath Oil and Gas Company, of Tulsa, Indian Territory, from June 14, 1906, to the 1st day of September, 1917, for a cash bonus of sixteen thousand eight hundred dollars ($16800.00), being the highest and best bid offered therefor, and a certified check to be deposited with the Honorable Thomas A. Sanson, Master in Chancery and Probate Commissioner, and a royalty of one-tenth (1-10) of the oil produced, and it appearing to the Court that said lease is in conformity and authority and direction of the order of this Court, and the Court being well and sufficiently advised in the premises, it is by the Court considered, adjudged and ordered that said lease be, and the same is hereby ratified, confirmed and approved, and it is the further order that the said Thomas A. Sanson, deposit said cash bonus of sixteen thousand eight hundred dollars ($16800.00) in some solvent bank in the Western District of the Indian Territory and *kept* until proof is given him that said lease has been duly approved by the Secretary of the Interior, and thereupon paid over by him to the said Guardian Monday Durant, and it is further ordered that the Galbreath Oil and Gas Company pay into the hands of Thomas A. Sanson, within ten days three hundred dollars ($300.00) to recover expenses.

LOUIS SULZBACHER,
Judge of the United States Court for the Western District of the Indian Territory.

Western Dist. Ind. Ter. Filed in open Court Jun- 14, 1906.

R. P. HARRISON,
Clerk U. S. Courts.

In the United States Court for the Western District of the Indian [-erritory,] at Sapulpa.

Probate. No. 260.

In re EDITH DURANT, a Minor, MONDAY DURANT, Guardian.

72 *Order and Decree of Court.*

On this day comes the petition of Monday Durant, Guardian of Edith Durant, for authority to make an oil and gas mining lease to Galbreath Oil and Gas Company, on the following lands of his said ward, to-wit:

The east half (½) of the northwest quarter (¼) of section fifteen (15) township seventeen (17) north, range twelve (12) east, of the Creek Nation, Indian Territory, containing eighty (80) acres more or less, according to the government survey, from date hereof, until the 2nd day of September, 1917.

And a cash bonus of sixteen thousand eight hundred ($16,800.00) dollars, being the highest and best bid offered therefor, and a certified check for this amount has been duly deposited with Thomas A. Sanson, Master in Chancery and Probate Commissioner, and a royalty of one-tenth (1-10) of the oil produced, under the rules and regulations of the Secretary of the Interior; and having examined said petition and being well and sufficiently advised by the Court, it is considered, adjudged and ordered that the said Monday Durant, Guardian, be and the same is hereby directed and authorized to execute an oil and gas mining lease to the Galbreath Oil and Gas Company upon the lands of his said ward, Edith Durant, hereinbefore described and upon the terms heretofore set out.

LOUIS SULZBACHER,
Judge of the United States Court
for the Western District, I. T.

Western Dist. Ind. Ter. Filed in open Court Jun- 14, 1906.
R. P. HARRISON,
Clerk U. S. Courts.

And thereafter, on the 25th day of June, 1906, the following paper was filed in the office of the Clerk of the Western District of the Indian Territory, at Sapulpa, Indian Territory:

JUNE 25, 1906.

Hon. Louis Sulzbacher, Judge, United States Court of the Indian Territory:

DEAR SIR: At the time you affirmed the Master's report in the Durant *et al.* lease matters at Sapulpa, you stated the following in substance, in open Court:

"I referred these minor lease matters to the Hon. Thomas A. Sanson, Master in Chancery, in December, to investigate and report.

That after his investigation, considering that in his judgment the interest of the minors would be best protected by advertising
73 the leases for sale, he did so advertise, the sale to take place March 5th, 1906. He informed me thereof before sale at Muskogee and I approved his acts."

Robert W. Morrison *et al.* have sued out a writ of error to the Indian Territory Court of Appeals in the matter of the estate of Edna and Edith Durant, minors, and for the purpose of keeping the record correctly in relation to said writ of error I ask you if the above statement is correct.

Yours truly, JOHN J. SHEA.

JUNE 25, 1906.

At the time that the Master's report in Edith and Edna Durant and other lease cases at Sapulpa was confirmed June 11th, 1906, I stated the following in substance:

"I referred these minor lease matters to the Hon. Thomas A. Sanson, Master in Chancery, in December, to investigate and report. That after his investigation, considering that in his judgment the interest of the minors would be best protected by advertising the leases for sale, he did so advertise, the sale to take place March 5th, 1906. He informed me thereof before sale at Muskogee and I approved his acts."

That this refers to all cases wherein sale was held by the Master March 5th, 1906, and includes the Edith Durant and Edna Durant minor leases.

LOUIS SULZBACHER, *Judge.*

Whereupon the Court doth approve the petition to lease and doth grant the order authorizing lease, at which time the lease is presented to the court and is by the court ratified, approved and confirmed, the court signing the order, confirming the lease. R. L. Morrison and associates at the time except to the ordering of the lease by the guardian and the order approving. The lease of Edith Durant is presented, and by the Court approved, ratified and confirmed. The report of the guardian is by the Court approved, and the Court doth sign the order and decree of Court herein.

And thereafter, on the 29th day of June, 1906, the same being a day of the May, 1906, term of said court, an order and decree of court and confirmatory order are filed, which are in words and figures as follows:

In the United States Court of the Western District of the Indian Territory, at Sapulpa.

Probate. No. 260.

In re EDNA DURANT, a Minor, MONDAY DURANT, Guardian.

74 *Order and Decree of Court.*

On this day comes the petition of Monday Durant, Guardian of Edna Durant, for authority to make an oil and gas mining lease to Galbreath Oil and Gas Company, on the following lands of his said ward, to-wit:

The northeast quarter of section eleven (11) township seventeen (17) north, range twelve (12) east, containing one hundred and sixty acres (160) more or less, according to the government survey thereof, of the Creek Nation, Indian Territory, from date hereof until the 2nd day of September, 1917.

And a cash bonus of Two Thousand Four Hundred and Sixty Dollars ($2460.00), being the highest and best bid offered therefor, and a certified check for this amount has been duly deposited with Thomas A. Sanson, Master in Chancery and Probate Commissioner, and a royalty of one-tenth (1-10) of the oil produced under the rules and regulations of the Secretary of the Interior; and having examined said petition and being well and sufficiently advised by the Court, it is considered, adjudged and ordered that the said Monday Durant, guardian, be and the same is hereby directed and authorized to execute the oil and gas mining lease to the Galbreath Oil and Gas Company upon the lands of his said ward, Edna Durant, hereinbefore described, and upon the terms heretofore set out.

LOUIS SULZBACHER,
Judge of the United States Court for the Western District of the Indian Territory.

June 29, 1906.

Endorsed: No. 60. Probate. *In re* Edna Durant, a minor. Monday Durant, Guardian. Order and Decree of Court. Western Dist. Ind. Ter. Filed in open Court Jun. 29. 1906. R. P. Harrison, Clerk U. S. Courts, Mars & Mars, Attorneys, Sapulpa, Ind. Ter.

In the United States Court for the Western District of the Indian Territory, at Sapulpa.

260, Probate.

In re EDNA DURANT, a Minor, MONDAY DURANT, Guardian.

Confirmed by Order.

On this 24th day of June, 1906, Monday Durant, Guardian herein, presents to the court an oil and gas mining lease upon
75 the lands executed by him under the order and authority of the Court, upon the following lands of his ward, to-wit:

The northeast quarter of section eleven (11) township seventeen (17) north, range twelve (12) east, of the Creek Nation, Indian Territory, containing one hundred and sixty (160) acres more or less, according to the government survey thereof, to the Galbreath Oil and Gas Company of Tulsa, Indian Territory, from June 14th, 1906, to the 2nd day of September, 1917, for a cash bonus of Two Thousand Four Hundred and Sixty Dollars ($2460.00), being the highest and best bid offered therefor, and a certified check to be deposited with the Honorable Thomas A. Sanson, Master in Chancery and Probate Commissioner, and a royalty of one-tenth (1-10) of the oil produced, and it appearing to the court that said lease is in conformity and authority and direction of the order of this court, and the court being well and sufficiently advised in the premises it is by the court considered, adjudged and ordered that said lease be and the same is hereby ratified, confirmed and approved, and it is further ordered that the said Thomas A. Sanson deposit said cash bonus of Two Thousand Four Hundred and Sixty Dollars ($2460.00) in some solvent bank in the Western District of the Indian Territory, and kept until proof is given him that said lease has been duly approved by the Secretary of the Interior, and thereupon paid over by him to the said guardian, Monday Durant, and it is further ordered that the Galbreath Oil and Gas Company pay into the hands of Thomas A. Sanson, within ten days one hundred ($100.00) Dollars, to recover expenses thereof.

LOUIS SULZBACHER,
Judge of the United States Court for the Western District, Ind. Ter.

Endorsed: No. 260, Probate. *In Re* Edna Durant, Minor. Monday Durant, Guardian. Confirmatory Order. Western Dist. Ind. Ter. Filed in Open Court Jun. 29, 1906. R. P. Harrison, Clerk U. S. Courts. Mars & Mars, Attys., Sapulpa, I. T.

And thereafter on the 20th day of July, 1906, appellants herein file their petition for writ of error, and assignment of errors which are in words and figures as follows:

In the United States Court of Appeals in the Indian Territory.

76 ROBERT W. MORRISON, CHARLES W. S. COBB, JOHN E. McKINNEY, FRANK N. BREENE, and W. J. BREENE, Plaintiffs in Error,

vs.

MONDAY DURANT, Guardian of EDNA DURANT and EDITH DURANT, Minors, GALBREATH OIL & GAS COMPANY, a Corporation, and the LAUREL OIL & GAS COMPANY, a Corporation, Defendants in Error.

Petition for Writ of Error.

The Honorable Justices of the United States Court of Appeals in the Indian Territory:

Your petitioners, Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, Frank N. Breene and W. J. Breene are aggrieved by the final orders and judgment entered in the case entitled the estate of Edna Durant and Edith Durant, minors, Monday Durant, Guardian, on the fourteenth day of June, A. D. 1906, by the United States Court for the Western Judicial District of the Indian Territory, sitting at Sapulpa, wherein said Court set aside the final order confirming and approving an oil and gas lease executed to your petitioners and further committed error by overruling the motion made by your petitioners to vacate and set aside the order setting aside the order of confirmation, and further committed error by directing the Master in Chancery to again offer for sale the lands upon which said lease had been executed to your petitioners and approved by the said Court.

Wherefore your petitioners pray for a writ of error to the United States Court for the Western Judicial District of the Indian Territory, directing said Court, under the seal thereof, distinctly and openly, to send the record and proceedings of said suit, together with all things concerning the same to the United States Court of Appeals, in Indian Territory, and now at the time of the filing of this petition for writ of error your petitioners, Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, Frank N. Breene, and W. J. Breene, plaintiffs in error, file their assignment of errors, setting up separately and particularly each error asserted and intended to be urged in the United States Court of Appeals in Indian Territory, and your petitioners further pray that a bond in such amount and with such conditions as shall be just be required and that upon the giving of such bond and its approval by one of the Justices of the United
77 States Court of Appeals in the Indian Territory, or the Clerk thereof, that then all further proceedings in this case be suspended, stayed and superseded and your petitioners will ever pray.

R. B. THOMPSON,
SHEA & MONTGOMERY,
Attorneys for Plaintiffs in Error.

In the United States Court in and for the Western Judicial District of the Indian Territory.

ROBERT W. MORRISON, CHARLES W. S. COBB, JOHN E. MCKINNEY, FRANK N. BREENE, and W. J. BREENE, Plaintiffs in Error,

vs.

MONDAY DURANT, Guardian of EDNA DURANT and EDITH DURANT, Minors, GALBREATH OIL & GAS MINING COMPANY, a Corporation, and THE LAUREL OIL & GAS COMPANY, a Corporation, Defendants in Error.

Assignment of Errors.

Your petitioners state that on March 5th, 1906, at a public sale of oil and gas leases, duly advertised and held under the order and direction of the United States Court for the Western Judicial District of the Indian Territory, at Sapulpa, and under the rules and regulations prescribed by said Court for the sale of oil and gas leases of minors, your petitioners were the highest and best bidders for the leases on the lands of the minors, Edna Durant and Edith Durant; that on the 7th day of March, 1906, they deposited with the Master in Chancery their certified check for the sum of Five Thousand One Hundred and Thirty ($5130.00) Dollars, the amount of their bid, and that the same has ever since been kept and held by the said Master and is now in his possession; that on March 9, 1906, the Guardian Monday Durant, made and executed an oil and gas lease on the lands of his wards to your petitioners, and that on June 11th, 1906, the action of the said Master in Chancery in advertising and selling of said leases to your petitioners and the action of said guardian in executing to your petitioners the said leases was fully and finally approved, ratified and confirmed by the said United States Court at Sapulpa; that afterwards and on June 12th, 1906, arbitrarily and without cause said Court set aside said final order of approval and confirmation and directed the Master to offer said leases for sale to the highest and best bidder on the following day and that in the records and proceedings in the above entitled cause there is manifest error in this, to-wit:

First. That the sale of said leases was in strict accordance with the rules of the court adopted, governing such matters in the
78 Western Judicial District; that your petitioners were the highest and best bidders therefor and were by the report of the Master in Chancery awarded said leases, and that afterwards said leases were executed, brought into Court and confirmed by the final order of said Court, and your petitioners then became the owners of said leases and the Court by arbitrarily setting aside the order confirming the same committed manifest error.

Second. That thereafter your petitioners filed a motion to set aside the order vacating the order confirming the leases in your petitioners, which said motion the Court overruled, thereby committing manifest error.

Third. That the Court by its order of June 12th, directing said Master in Chancery to sell said leases on the following day, June 13th, 1906, committed manifest error.

Fourth. That the Court in directing said sale of said leases without advertising and in violation of its own rules adopted for the disposition of oil and gas leases of lands of minors, committed manifest error.

Fifth. That on the 14th day of June, 1906, the court confirmed, ratified and approved the report of the Master in Chancery as to the sale of the oil and gas leases upon the lands of said minors, prior to the filing of said report in said Court, and by its refusal to permit your petitioners to except committed manifest error.

Sixth. That your petitioners asked for three days in which to except to said Master's report and that in the refusing to grant the same said Court committed manifest error.

Seventh. That said Court committed manifest error in refusing to grant a supersedeas to your petitioners.

Wherefore, your petitioners, Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, Frank M. Breene and W. J. Breene, pray that the order of the United States Court for the Western Judicial District of the Indian Territory, so far as same sets aside and vacates the final order confirming the oil and gas leases in your petitioners be reversed and set aside and that said United States Court be ordered and directed to reinstate and hold in full force and effect the order of June 11th, 1906, approving, ratifying and confirming the oil and gas leases executed by said guardian to these petitioners.

R. B. THOMPSON,
SHEA & MONTGOMERY,
Attorneys for Plaintiffs in Error.

79 And thereafter on the 27th day of July, 1906, the appellants herein filed bond for cost, which said bond is in words and figures as follows:

In the United States Court of Appeals in the Indian Territory.

Cost Bond.

Know All Men By These Presents:

That we, Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank N. Breene, are held and firmly bound unto Monday Durant, guardian of Edith and Edna Durant, minors, the Galbraith Oil and Gas Company and the Laurel Oil and Gas Company in the full and just sum of Three Hundred Dollars ($300) to be paid to the said Monday Durant, guardian of Edith and Edna Durant, minors, the Galbraith Oil and Gas Company and the Laurel Oil and Gas Company, their heirs, executors, administrators, and assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators,

[jointly] and severally by these presents. Sealed with our seals, and dated this ninth day of July, in the year of our Lord one thousand nine hundred and six.

Whereas, lately at the March term of the United States Court at Sapulpa, in a suit pending in said court relating to the leasing of the lands of Edith and Edna Durant, minors, judgment was rendered in said cause setting aside a final order confirming certain leases in Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William I. Breene and Frank N. Breene and the said Robert A. Morrison, Charles W. S. Cobb, John E. McKinney, William I. Breene and Frank N. Breene have obtained in said above entitled cause a writ of error to the said court to reverse the rulings in the aforesaid suit, and a citation directed to the said Monday Durant, guardian of Edith and Edna Durant, minors, the Galbraith Oil and Gas Company and the Laurel Oil and Gas Company, citing and admonishing them to be and appear in the United States Court of Appeals in the Indian Territory, at the City of South McAlester, Indian Territory, sixty days from and after the date of said citation.

Now the condition of the above obligation is such that if the said Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank N. Breene, shall prosecute said writ
80 of error to effect and judgment, and answer all costs if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

Signed, sealed and delivered by:

ROBERT W. MORRISON, [SEAL.]
CHARLES W. S. COBB, [SEAL.]
JOHN E. McKINNEY, [SEAL.]
WILLIAM J. BREENE,
FRANK M. BREENE,
By JOHN J. SHEA, *Their Attorney.*
NATIONAL SURETY COMPANY,
By CARL PURSEL,
Resident Vice-President.

[SEAL.]
Attest:
E. G. PHELPS,
Resident Ass't Secretary.

Approved July 24-'06.

WILLIAM R. LAWRENCE, *Judge.*

Endorsed: Western Dist. Ind. Ter. Filed Jul- 27, 1906. R. P. Harrison, Clerk U. S. Courts.

In the United States Court for the Western District of the Indian Territory, Sitting at Sapulpa, May Term, A. D. 1906.

Present: The Honorable Louis Sulzbacher, Judge of said Court.

On August 2nd, A. D., 1906, one of the regular days of said term of Court, the following order was made and entered of record, to-

wit: Upon request of Attorney J. J. Shea, it was stated by the Court that exceptions to the Master's report were argued March 31st and the Master's report confirmed June 11th and exceptions were overruled and on June 13th confirmation set aside, and it is ordered that the statement signed by Judge Louis Sulzbacher on June 25th be entered of record *Nunc Pro Tunc* as follows, to-wit:

"I referred these minor lease matters to the Hon. Thomas A. Sanson, Master in Chancery, in December to investigate and report. That after his investigation, considering that in his judgment the interest of the minors would be best protected by advertising the leases for sale, he did so advertise, the sale to take place March 5th, 1906. He informed me thereof before the sale at Muskogee and I approved his acts."

81 And come R. B. Thompson, Esq., and A. L. J. Merriwether, Attorneys for Monday Durant, the guardian herein and present the filed report of said guardian and after due consideration, the Court doth approve said report and they further present petition for final discharge and after due consideration the Court doth grant said petition.

And comes Bates B. Burnett and presents his petition to be appointed curator herein and petition from Monday Durant for appointment of said Bates B. Burnett and bond in the sum of Fifty Thousand Dollars as curator of the estate of Edith Durant and bond in the sum of Five Thousand Dollars as curator of the estate of Edna Durant and the Court having examined the same and being fully advised doth appoint said Bates B. Burnett curator of the estate of Edith Durant and Edna Durant and orders that said bonds be approved by the clerk. And it is further ordered that letters of curatorship thereafterwards issue to him herein.

Additional Record.

In Case No. 260, Probate at Sapulpa, Indian Territory.

In the Matter of EDNA and EDITH DURANT, Minors.

In the United States Court of Appeals in the Indian Territory.

ROBERT W. MORRISON, CHARLES W. S. COBB, JOHN E. MCKINNEY, FRANK N. BREEN, and W. J. BREEN, Plaintiffs in Error,

vs.

MONDAY DURANT, Guardian of EDNA DURANT and EDITH DURANT, Minors; GALBRAITH OIL & GAS COMPANY, a Corporation, and THE LAUREL OIL & GAS COMPANY, a Corporation, Defendants in Error.

Petition for Writ of Error.

To the Honorable Justices of the United States Court of Appeals in the Indian Territory:

Your petitioners, Robt. W. Morrison, Charles W. S. Cobb, John F. McKinney, Frank N. Breene and W. I. Breene, are aggrieved by the

final orders and Judgment entered in the case entitled the estate of Edna Durant and Edith Durant, minors, Monday Durant, guardian, on the fourteenth day of June, A. D., 1906, by the United States Court for the Western Judicial District of the Indian Territory, sitting at Sapulpa, wherein said Court set aside the final order confirming and approving an oil and gas lease executed to your petitioners and further committed error by overruling the motion made
82 by your petitioners to vacate and set aside the order setting aside the order of confirmation, and further committed error by directing the Master in Chancery to again offer for sale the lands upon which said lease had been executed to your petitioners and approved by the said court.

Wherefore your petitioners pray for a writ of error to the United States Court for the Western Judicial District of the Indian Territory, directing said Court, under the seal thereof, distinctly and openly, to send the record and proceedings of said suit, together with all things concerning the same to the United States Court of Appeals, in Indian Territory, and now at the time of the filing of this petition for writ of error your petitioners, Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, Frank N. Breen and W. J. Breene, plaintiffs in error, file their assignment of errors, set-ing up separately and particularly each error asserted and intended to be urged in the United States Court of Appeals in Indian Territory, and your petitioners further pray that a bond in such amount and with such conditions as shall be just be required and that upon the giving of such bond and its approval by one of the Justices of the United States Court of Appeals in the Indian Territory, or the Clerk thereof, that then all further proceedings in this cause be suspended, stayed and superseded and your petitioners will ever pray.

R. B. THOMPSON,
SHEA & MONTGOMERY,
Attorneys for Plaintiffs in Error.

In the United States Court of Appeals in the Indian Territory.

ROBERT W. MORRISON, CHARLES W. S. COBB, JOHN E. MCKINNEY, FRANK N. BREENE, and W. J. BREENE, Plaintiffs in Error,

vs.

MONDAY DURANT, Guardian of EDNA DURANT and EDITH DURANT, Minors; GALBRAITH OIL & GAS MINING COMPANY, a Corporation, and THE LAUREL OIL & GAS COMPANY, a Corporation, Defendants in Error.

Assignment of Errors.

Your petitioners state that on March 5th, 1906, at a public sale of oil and gas leases, duly advertised and held under the order and direction of the United States Court for the Western Judicial District of the Indian Territory, at Sapulpa, and under the rules and regulations prescribed by said Court for the sale of oil and gas leases of minors, your petitioners were the highest and best bidders for the leases on the land of the minors, Edna and Edith Durant, that on the

7th day of March, 1906, they deposited with the Master in Chancery their certified check for the sum of Five Thousand One Hun-
83 dred and Thirty ($5,130.00) Dollars, to the amount of [the-r] bid and that the same has ever since been kept and held by the said Master and is now in his possession; that on March 9, 1906, the guardian, Monday Durant, made and executed an oil and gas lease on the lands of his said wards to your petitioner and that on June 11th, 1906, the action of the said Master in Chancery in advertising and selling of said leases to your petitioners, and the action of said guardian in executing to your petitioners the said leases were fully and finally approved, ratified and confirmed by the said United States Court at Sapulpa; that afterwards and on June 12th, 1906, arbitrarily and without cause said Court set aside said final order of approval and confirmation and directed the Master to offer said leases for sale to the highest and best bidder on the following day, and that in the records and proceedings in the above entitled cause there is manifest error in this, to-wit:

First. That the sale of said leases was in strict accordance with the rules of the court adopted, governing such matters in the Western Judicial District; that your petitioners were the highest and best bidders therefor and were by the report of the Master in Chancery awarded said leases, and that afterwards said leases were executed, brought into court and confirmed by the final order of said Court, and your petitioners then became the owners of said leases and the Court by arbitrarily setting aside the order confirming the case committed manifest error.

Second. That thereafter your petitioners filed a motion to set aside the order vacating the order confirming the leases in your petitioners, which said motion the Court overruled, thereby committing manifest error.

Third. That the Court by its order of June 12th, directing said Master in Chancery to sell said leases on the following day, June 13th, 1906, committed manifest error.

Fourth. That the Court in directing said sale of said leases without advertising and in violation of its own rules adopted for the disposition of oil and gas leases of lands of minors, committed manifest error.

Fifth. That on the 14th day of June, 1906, the court confirmed, ratified and approved the report of the Master in Chancery as to the sale of the oil and gas leases upon the lands of said minors, prior to the filing of said report in said Court, and by its refusal to permit your petitioners to except committed manifest error.

Sixth. That your petitioner asked for three days in which
4 to except to said Master's report and that in refusing to grant the same said court committed manifest error.

Seventh. That said Court committed manifest error in refusing to grant a supersedeas to your petitioners.

Wherefore [*your*] petitioners Robert W. Morrison, Charles W. Webb, John E. McKinney, Frank N. Breene and J. W. Breene, pray that the order of the United States Court for the Western Judicial District of the Indian Territory, so far as same sets aside and vacates the final order confirming the oil and gas leases in your petitioners

be reversed and set aside and that said United States Court be ordered and directed to reinstate and hold in full force and effect the order of June 11th, 1906, approving, ratifying and confirming the oil and gas leases executed by said guardian to these petitioners.

R. B. THOMPSON,
SHEA & MONTGOMERY,
Attorneys for Plaintiffs in Error.

United States Court of Appeals, Indian Territory, at Chambers.

MUSKOGEE, *June* 19, 1906.

Upon the hearing of the foregoing petition for writ of error, and the assignment of errors the Judge finds that there is ground for the issuing of writ of error in the above entitled matter and cause, and it is therefore ordered that the Clerk of this Court do issue writ of error as provided by the statute and the rules of this Court, upon the pl'ff in error giving bond in the sum of $300 to be approved by the Clerk conditioned to pay all costs that may accrue.

WILLIAM R. LAWRENCE,
Judge of Said Court.

The foregoing Petition for Writ of Error and Assignment of Errors was filed in the United States Court in and for the Indian Territory at Sapulpa, July 20th, 1906.

[COURT SEAL.] R. P. HARRISON,
Clerk U. S. Court,
By O. M. ILELAN, *Deputy.*

AT CHAMBERS IN MUSKOGEE, I. T., *July* 24, '06.

Ordered that the writ of error prayed for in within petition issue.
WILLIAM R. LAWRENCE, *Judge, &c.*

85 Endorsed: Filed Jul- 20, 1906. R. P. Harrison, Clerk, Western Dist. I. T.

And thereafter on the 19th day of November, 1906, the appellant herein files Assignment of Errors, Petition for Appeal and Allowance and Cost Bond which are in words and figures as follows:

In the United States Court of Appeals for the Indian Territory.

In the Matter of the Guardianship of EDITH DURANT and EDNA DURANT, Minors; BATES B. BURNETT, Curator, Guardian ROBERT W. MORRISON *et al.*, Appellants,

vs.

—— ——, Guardian, GALBRAITH OIL AND GAS COMPANY, and LAUREL OIL AND GAS COMPANY, Appellees.

Assignment of Errors.

Comes now Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene, appellants in the above entitled cause and state that in the record and proceedings in said [*sause*] there is manifestly error in the rulings and opinion in the United States Court for the Western District of the Indian Territory at Nowata, *inter alia*, in this, to-wit:

1st. That the [revo*k*ation], *recision*, or setting aside by the said United States Court sitting at Sapulpa on the 12th and 13th days of June, 1906, of the order, judgment, or decree of confirmation in favor of said appellants and entered of record June 11th, 1906, was error in that the Court entered the said order, judgment, or decree of [revo*k*ation], *recision*, or setting aside upon a mere motion, and not upon an original bill, petition, or other like application by proper party or parties duly filed or submitted to said Court prior to the entry of the order revoking the judgment, or decree of confirmation in favor of the said appellants.

2nd. That the said United States Court sitting as aforesaid in [rov*k*ing], rescinding, or setting aside the order, judgment, or decree of confirmation entered of record by said Court June 11, 1906, wherein and whereby the said Court ratified, approved, and confirmed the title of said appellants to the leases in question pursuant to the said judicial sale of March 5th, 1906, did commit error in that the Court without authority and in prejudice of the lawful rights of the appellants entered under dates of June 12th and June 13th, 1906, [*and*] order or decree revoking the said order or decree in favor of the appellants aforesaid, and so did upon the *ex parte* appli-
86 cation of third party or parties moving the Court to that end by mere motion without any precedent, offer, or indemnity to protect or save harmless the said appellants from loss of their moneys, interests, or reasonable outlays, or other like reasonable losses or expenditures in the premises by reason of their being *bona fide* purchasers for value without notice and making payment accordingly at the said judicial sale of March 5th, 1906.

3rd. That the said United States Court sitting as aforesaid in revoking [rescending], or setting aside the said order or decree of confirmation in favor of the appellants on June 11, 1906, as aforesaid committed error in that the same was so revoked, rescinded, or set aside without legal or adequate notice to the appellants in the premises.

4th. That the said United States Court sitting as aforesaid having on the 11th day of June, 1906, entered judgment of confirmation in favor of the appellants wherein and whereby the said Court ratified, approved, and confirmed their title to said leases (subject only to the ultimate adjudication of the Secretary of the Interior) as acquired in virtue of the said judicial sale of March 5th, 1906, committed error in rescinding, revoking, or setting aside thereafter, to-wit: under date of June 12th and June 13th, 1906, the said order or decree of confirmation in favor of the appellants for the reason that the said decree of confirmation in favor of the appellants could not be revoked, rescinded, or set aside except for fraud in connection with or materially affecting the said sale of March 5th, 1906, or by reason of mistake or improvidence on the part of the Court in entering the said judgment of confirmation in favor of the appellants, neither of which, to-wit: fraud or judicial mistake existed or was alleged as appears by the records in the case.

5th. That the decree of June 11th, 1906, confirming title as aforesaid in the appellants to the leases mentioned could not be revoked, rescinded, or set aside upon the ground taken by the court to that end, to-wit: That much better leases could be made and much higher bonuses obtained after the entry of the said order or decree of confirmation in favor of the appellants as aforesaid.

6th. That in revoking the said order or decree of confirmation in favor of the said appellants as aforesaid the said court committed error for the reason that the said Court was moved to do so, and did so [*far*] matter and upon grounds arising and occurring after the entry of the said decree of confirmation in favor of the said appellants.

87 7th. The learned Court erred in rescinding, revoking or [*set-*] setting aside the order or decree of confirmation entered of record June 11th, 1906, in favor of the appellants for the reason that there was as shown by the record no fraud affecting the said [*juricial*] sale of March 5th, 1906, nor mistake or improvidence on the part of the court in confirming said sale in favor of the appellants.

8th. That the said Court erred in setting aside the order or decree of confirmation in favor of the appellants June 11, 1906, for the reason that the said Court was moved to do so after the entry of said order or decree in favor of the appellants by party or parties having no lawful right whatever in the premises to challenge, attack, or impair in any particular the rights and titles acquired by the appellants in virtue of the said judicial sale of March 5th, 1906. That inasmuch as no question of fraud was proven or alleged, nor question of irregularity raised touching or concerning the said judicial sale of March 5th, 1906, or the rights of the appellants as purchasers thereat, and further as the price then paid as disclosed by the record and proceedings herein was legally fair and adequate at the time of the sale, it became at the time of the rendition of the order or decree of confirmation in favor of the appellants the lawful duty of the Court to then render such decree and, having done so, the power of the Court over the subject matter and rights of the appellants as

bona fide purchasers at said sale, then and there became exhausted.

9th. That the said Court, sitting as aforesaid, having pursuant to its legal duty in the premises entered the said order or decree of confirmation in favor of the appellants, advisedly and after due consideration, erred in thereafter rescinding, revoking or setting aside the same at the instance of third party or parties appearing therein and thereafter, and alleging no fraud or irregularity in connection with the said sale of March 5th, 1906, but simply then offering to [*paymore*] for the leases than they brought pursuant to the said judicial sale of March 5th, 1906; that the said Court, sitting as aforesaid erred in rescinding, revoking, or setting aside the order or decree of confirmation in favor of the appellants at the instance of parties thereafter and therein appearing, and offering to bid more for the said leases, solely upon the ground of the alleged appreciation in value thereof occurring subsequent to the said judicial sale of March 5th, 1906.

10th. Inasmuch as the said leases in question sold at the said judicial sale of March 5th, 1906, were on the lands of the Creek minors, the said United States Court, sitting as aforesaid, had no power or jurisdiction over the same or the subject matter
88 thereof, except as pertained to the legal appointment and qualification of the guardian for said minors, and the due and legal regularity of the sale of March 5th, 1906.

[12th.] That the said United States Court, sitting as aforesaid, erred in the premises for the reason that the resale of the said leases pursuant to the said Court's order or decree of [revo*k*ation] under dates of June 12th and June 13th, 1906, was without advertisement, or proper advertisement and in general and flagrant violation of its own established written or printed rules in connection with sales upon the lands of Creek minors.

[13th.] Inasmuch as the record in the case discloses there was no fraud, accident, improvidence or mistake touching or concerning the said judicial sale of March 5th, 1906, or the entry of the order or decree of confirmation by the court June 11th, 1906, as aforesaid, the said order or decree of confirmation became a legal finality subject only to the ultimate and legal determination or action of the Secretary of the Interior in the premises.

[14th.] That the order or decree confirming the leases in the appellants herein as aforesaid was a final order or decree of the court entered after due consideration and deliberation in which no oversight, fraud, accident or mistake entered into or affected said decree or its subject matter, and said Court, therefore erred as is apparent of record herein in arbitrarily upon the motion or action of third party or parties, or its own motion, or both, in setting aside the order or decree of confirmation in favor of the appellant entered as aforesaid June 11th, 1906.

[15th.] That the said Court, sitting as aforesaid, erred in refusing to grant the motion of the appellants, per their attorney John J. Shea, presented to and filed in said Court, June 14th, 1906, to set aside the said order or decree of [revo*k*ation] and to re-instate the order of June 11th, 1906, approving and confirming said oil and

gas leases upon the lands of said minors in said appellants, for the reasons, *inter alia,* that the said sale of March 5th, 1906, was judicially and legally regular; for a fair and adequate price at the time; that the said sale had been duly confirmed June 11th, 1906, by the court; that the said appellants and vendees had been guilty of no fraud in the premises; that there was no fraud, improvidence, accident or mistake influencing the Court to enter said order or decree of confirmation; that at the time such order or decree of confirmation was entered in favor of the appellants there was no legal objection, or right of legal objection apparent of record or
89 otherwise against the sale; that the said decree of confirmation in favor of the appellants was and became a legal finality and subject to no further power or control there-over on the part of the said Court; that the Court was unlawfully influenced June 12th and June 13th, 1906, to abrogate or rescind, and did abrogate or rescind, the said order or decree of confirmation in favor of appellants upon the mere *ex parte* motion of third party or parties having no legal standing to challenge or attack the validity of said order of confirmation in favor of the appellants without notice, or adequate legal notice, or indemnity, or proper offer of indemnity to the appellants as *bona fide* purchasers for value in the premises; and that the said Court was influenced unlawfully as aforesaid, and did in violation of the lawful rights of the appellants in the manner aforesaid, order against their protest a resale of the said leases in question without conformity or attempted conformity to the established rules of said Court, and upon the grounds that after the [en*rty*] of the decree or order of confirmation in favor of the appellants, as aforesaid third party or parties having no legal standing to object in any manner to said judicial sale of March 5th, 1906, appeared in said Court and by reason of the increase or alleged increase in the value of said leases occurring subsequent to March 5th, 1906, offering to pay more therefor than the price for which the same was sold pursuant to the sale of March 5th, 1906.

JOHN J. SHEA,
Attorney for Appellants.

H. H. MONTGOMERY,
EDMOND C. BREENE,
Of Counsel.

In the United States Court of Appeals for the Indian Territory.

In the Matter of the Guardianship of EDITH DURANT and EDNA DURANT, Minors; BATE B. BARNETT, Curator.

ROBERT W. MORRISON ET AL., Appellants,
vs.
BATE B. BARNETT, Curator; GALBREATH OIL AND GAS COMPANY and LAUREL OIL AND GAS COMPANY, Appellees.

Your petitioners Robert W. Morrison, *et al.* appellants in the above entitled cause, respectfully show that the above cause is now

pending in the United States Court for the Western District of the Indian Territory at Sapulpa that a judgment and decree of said Court was made and entered of record June 11, 1906, confirming an oil and gas lease upon the lands of said minors to your petitioners, Robert M. Morrison, *et al.*, and that thereafter and on June
90 13th the said Court arbitrarily and upon its own motion, and without right or legal authority set aside said decree of confirmation, and all rights of your petitioner in and to the lease as aforesaid. And your petitioners feeling aggrieved at the rendition of said judgment and decree setting aside said order of confirmation, respectfully pray an appeal from the United States Court for the Western District of the Indian Territory at Sapulpa, to the United States Court of Appeals for the Indian Territory, in order that the error complained of in the assignment of errors herewith presented, may be reviewed and if error be found corrected according to the laws and customs of the United States of America.

JOHN J. SHEA,
Attorney for Appellants.

Allowed by
WILLIAM R. LAWRENCE,
Judge of United States Court of Appeals.

In the United States Court of Appeals in the Indian Territory.

In the Matter of the Guardianship of EDITH DURANT and EDNA DURANT, Minors; BATES B. BURNETT, Curator.

ROBERT W. MORRISON ET AL., Appellants,
vs.
BATES B. BURNETT, GALBRAITH OIL AND GAS COMPANY, and LAUREL OIL AND GAS COMPANY, Appellees.

Cost Bond.

Kow All Men By These Presents:

That we, Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene as principals and The National Surety Company as surety, are held and firmly bound unto Bates B. Burnett, Curator of the estate of Edith and Edna Durant, minors, the Galbreath Oil and Gas Company, and the Laurel Oil and Gas Company in the full and just sum of Three Hundred and no-100 dollars ($300.00) to be paid to the said Bates B. Burnett, Curator of Edith and Edna Durant, minors, the Galbreath Oil and Gas Company and the Laurel Oil and Gas Company, their heirs, executors, administrators and assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, [*to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators,*] jointly and severally by these presents. Sealed with our seals, and dated this 19th day of November, in the year of our Lord one thousand nine hundred and six.

Whereas, lately at the May term of the United States Court at Sapulpa, in a suit pending in said court relating to the leasing of the lands of Edith and Edna Durant, minors, judgment was rendered in said cause setting aside a final order confirming certain leases in Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene and the said Robert A. Morrison, Charles W. S. Cobb, John E. McKinney, Wm. J. Breene and Frank M. Breene have appealed from the order of the said District Court [*sitting*] aside the decree of confirmation in the above entitled cause, and a citation has been issued to the said Bates B. Burnett, Curator, of Edith and Edna Durant minors, the Galbreath Oil and Gas Company, and the Laurel Oil and Gas Company citing and admonishing them to be and appear in the United States Court of Appeals in the Indian Territory at the City of South McAlester sixty (60) days from and after the date of said citation.

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Now the condition of the above obligation is such that if the said Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene, shall prosecute said appeal to final judgment, and answer all costs if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

Signed, sealed, and delivered by

ROBERT W. MORRISON, [SEAL.]
CHARLES W. S. COBB, [SEAL.]
JOHN E. McKINNEY, [SEAL.]
WILLIAM J. BREENE,
FRANK M. BREENE,
By J. J. SHEA, *Their Attorney.*

[Seal of National Surety Company, New York.]

NATIONAL SURETY COMPANY,
——— ———,
Resident Vice-President.
E. J. PHELPS,
Resident Ass't Secretary.

Nov. 19, 1906,

Approved:
WILLIAM R. LAWRENCE, *Judge.*

UNITED STATES OF AMERICA,
Indian Territory, Western District, ss:

I, R. P. Harrison, Clerk of the United States Court for the Western District of the Indian Territory, do hereby certify that the foregoing [*in*] a true and complete Transcript of the record and proceedings in the Matter of the Guardianship of Edith and Edna Durant, Probate No. 260, as the same appears of record in my office at Sapulpa, I. T.

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Witness my hand and seal of said Court this 19th day of November, 1906.

[COURT SEAL.] R. P. HARRISON,
Clerk U. S. Court.

Endorsed: No. 806. *In re* Guardianship of Edith and Edna Durant, Minors. R. W. Morrison, *et al.*, Appellant. Transcript of Record. Filed in the Office of Clerk of U. S. Court of Appeals, Ind. Ter. Nov. 21, 1906. Wm. P. Freeman, clerk.

And afterwards, to-wit: on the 23rd day of November, A. D. 1906, there was filed in the office of the clerk of said Court a motion to strike out part of the transcript and to dismiss the appeal herein, which said motion is in the words and figures following, to-wit:

In the United States Court of Appeals in the Indian Territory.

In re Guardianship of EDITH and EDNA DURANT, Minors.

No. 806.

R. W. MORRISON ET AL., Appellant,
vs.
B. B. BURNETTE ET AL., Appellees.

Now comes the appellees herein, by Preston C. West, P. L. Soper, J. H. Huckleberry and Thos. H. Owen, their attorneys, and respectfully move this Honorable Court to strike from the transcript of record, in said case all that portion of said alleged record, excepting the petition or pleadings and matter properly of record in the probate side of the United States Court at Sapulpa, Indian Territory.

II.

Said appellees further move the court to strike from said transcript of record the reports of the Master in Chancery on pages 10, 11, 12, 13, 14, 15, 16 & 17 of said printed record, and all testimony taken and set forth in said record upon pages 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, for the reason that none of said reports or testimony has been properly incorporated in any bill of exceptions, and is, therefore, not a part of the record in this case.

III.

Said appellees further move this Honorable Court to strike from said record the affidavits contained in said alleged record on
93 pages 42, 43, 44, 45, for the reason that none of said affidavits are as a matter of fact matters of record, and have not properly been brought into said case by Bill of Exceptions.

IV.

Said appellees further move this Honorable Court to strike from said record the alleged motion of Robert W. Morrison, *et al.*, found upon pages 50, 51, of said printed record, for the reason that the same has not been incorporated in any bill of exceptions, and is no a part of said record.

V.

Said appellees further move this Honorable Court to strike from said record the telegram of said J. J. Shea as found upon page 5 of said printed record, for the reason that the same is not a part o the record in this case, and has not been brought in the record by properly authenticated bill of exceptions.

VI.

Said appellees further move this Honorable Court to strike from said record the motion of Robert W. Morrison, *et al.*, as found o pages 56, 57, 58, of said printed record for the reason that the sam has not been made a part of the record by any properly authenti cated bill of exceptions.

VII.

Said appellees further move this Honorable Court to strike from said record the motion of John J. Shea, filed in open court Jun 14, 1906, as is shown upon page 58 of the alleged printed record, o said case, for the reason that the same is not a part of the record, an the same has not been brought into the case by any duly authenti cated bill of exceptions.

VIII.

Said appellees further move this Honorable Court to strike from said record the affidavit of John J. Shea, as is shown upon pages 58 59, of said alleged printed record of said case, for the reason that th same is not a part of the record and has not been brought into th case by any duly authenticated bill of exceptions.

IX.

Said appellees further move this Honorable Court to strike from said record the motion of John J. Shea, as is shown upon page 6 of said alleged record in said case for the reason that the same is no a part of the record, and has not been brought into the case by an duly authenticated bill of exceptions.

94 X.

Said appellees further move this Honorable Court to strike from said record the motion for an appeal, as is shown upon page 61 o said alleged record in the case, for the reason that the same is no a part of the record, and has not been brought into the case by an duly authenticated bill of exceptions.

XI.

Said appellees further move this Honorable Court to strike from said alleged record all that portion thereof, consisting of a letter of June 25, 1906, signed by John J. Shea and the reply of Louis Sulzbacher, Judge, as found upon printed pages 72-73 of said alleged record, for the reason that the same are not a part of any record in said case, and show upon their face that they did not occur in open court and have not been brought into the record by any properly authenticated bill of exceptions.

XII.

Said appellees further move this Honorable Court to strike from the alleged record all that portion thereof consisting of a statement of June 25, 1906, signed by Judge Sulzbacher, and attempted to be incorporated in the record by order of the United States court for the western district of the Indian Territory at Sapulpa on August 2, 1906, and found at pages 80, 81 of said purported record, because the same is not a part of any record in the case, and the Court had no authority to order the same made of record, and the same was done without the knowledge or consent of appellees, and has not been brought into the record by any properly authenticated bill of exceptions.

XIII.

Said appellees further move the court to dismiss the appeal herein, First. Because there is now pending upon the docket of this court, and numbered 774, a case between the same parties, taken by writ of error from the United States court for the western district of the Indian Territory, at Sapulpa, involving the same matters and things as are involved in this appeal.

Second. Because this appeal is taken from the proceedings of the United States Court for the western district of the Indian Territory at Sapulpa, in probate, and is a proceeding at law, and an appeal does not lie therein, and said cause cannot be heard on appeal
95 in this court, and there is no authority in law for appealing this cause as an equity [proceedings], or in the manner attempted to be done by the appellants herein.

P. C. W[illegible]T,
P. L. SC[illegible]R,
J. H. HUCKLEBERRY, AND
THOS. H. OWEN,
For Appellees.

Endorsed: #806. In U. S. Court of Appeals for Ind. Ter. Robt. W. Morrison *et al. vs.* Galbreath Oil & Gas Co. Motion to dismiss, etc. Filed in the office of the Clerk of U. S. Court of Appeals, Ind. Ter. Nov. 23, 1906. Wm. P. Freeman, Clerk.

And afterwards, to-wit, on the 23rd day of November, A. D. 1906, there was filed in the office of said Clerk, a Stipulation in said cause, which is in the words and figures following, to-wit:

In the U. S. Court of Appeals for the Indian Territory.

In re Guardianship EDITH and EDNA DURANT.

R. W. MORRISON ET AL. *et al.*
vs.
THE GALBREATH OIL & GAS CO.

Whereas the above entitled case is pending as a law case in this court number 774 and an appeal in equity has also been filed (number 806) and that motions have been filed by defendants below in each case moving to strike out certain portions of record and dismiss the writ of error and appeal, now therefore it is agreed that said motions and both of said records may be submitted at this oral hearing to be considered by this Court and decided as to it may be meet.

JOHN J. SHEA,
Att'y for R. W. Morrison et al.
P. C. WEST,
P. L. SOPER,
Att'ys for Galbreath Oil & Gas Co.

Endorsed: Nos. 774 & 806. R. W. Morrison *et al. vs.* The Galbreath Oil & Gas Co., Stipulation. Filed in the office of the Clerk of U. S. Court of Appeals, Ind. Ter., Nov. 23, 1906. Wm. P. Freeman, Clerk.

And afterwards, to-wit: on the 23rd day of November, A. D., 1906, it being one of the days of the regular September Term, 1906, of said Court, the following proceedings were had and made of record, to-wit:

96 In the Matter of the Guardianship of EDITH DURANT and EDNA DURANT, Minors; BATES B. BURNETTE, Curator.

No. 806.

ROBERT W. MORRISON ET AL., Appellants.

Now on this 23rd day of November, A. D., 1906, this cause is submitted to the Court upon the motion to dismiss, transcript, briefs and oral arguments, of all parties hereto.

And afterwards, to-wit: On the 24th day of November, A. D. 1906, the following further proceeding was had and made of record in said Court, in said cause, to-wit:

the Matter of the Guardianship of EDITH DURANT and EDNA DURANT, Minors; BATES B. BURNETTE, Curator.

No. 774.

ROBERT W. MORRISON ET AL., Plaintiffs in Error.

Now, on this 24th day of November A. D., 1906, it is ordered by e Court that this cause be, and the same is hereby consolidated th cause numbered 806, between the same parties hereto, and the ole matter treated as an appeal in equity, to which action of the urt in consolidating this cause with cause numbered 806, the aintiffs in Error herein object and except.

And afterwards, towit: on said 24th day of November, A. D., 06, the following further proceedings were had and made of record said cause by said Court, to-wit:

the Matter of the Guardianship of EDITH DURANT and EDNA DURANT, Minors; BATES B. BURNETTE, Curator.

(No. 774 and No. 806.)

ROBERT W. MORRISON ET AL., Appellants.

Now on this day the motion to strike out certain parts of the anscript herein, and to dismiss this cause, coming on for a hear- g, and all and singular, the Court being fully advised in the emises said motion is overruled.

And afterwards, to-wit: on the said 24th day of November, A. D., 06, the following further proceedings were had and made of ord in said cause in said Court, to-wit:

the Matter of the Guardianship of EDITH and EDNA DURANT, Minors; BATES B. BURNETTE, Curator.

No. 774 and No. 806.

BERT W. MORRISON, CHARLES W. S. COBB, JOHN E. McKINNEY, WILLIAM J. BREENE, and FRANK M. BREENE, Appellants,

vs.

TES B. BURNETTE, Curator of the Estates of EDITH and EDNA DURANT, Minors; THE GALBREATH OIL & GAS COMPANY, and THE LAUREL OIL & GAS COMPANY, Appellees.

Now, on this 24th day of November, A. D. 1906, this cause comes on to be heard upon the transcripts, and briefs filed rein, as well as upon the oral argument of all parties hereto, and

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it being found, upon consideration by the Court, that the Court evenly divided upon the questions involved herein, and cannot co to an agreement as to how the appeal herein should be decid whereupon, under the statute, the judgment of the United Sta Court for the Western District in this cause stands affirmed.

It is, therefore, considered, ordered, decreed and adjudged, t the judgment and decree of the United States Court for the West District of the Indian Territory, sitting at Sapulpa, in this ca rendered, be and the same is hereby in all things affirmed with co

It is further considered and adjudged by the Court that the A pellees herein have and recover of and from the appellants all th costs and charges herein laid out and expended by reason of the peal herein, and that execution issue therefor.

And afterwards, to-wit, on the 26th day of November, A. D. 19 there was filed in the office of the Clerk of said Court, a Petition Appeal, in said cause, which is in the words and figures followi to-wit:

In the United States Circuit Court of Appeals, Eighth Circuit

In the Matter of the Guardianship of EDITH DURANT and Ed DURANT, Minors; BATES B. BURNETTE, Curator.

No. 806.

ROBERT W. MORRISON, CHARLES W. S. COBB, JOHN E. MCKINN WILLIAM J. BREENE, and FRANK M. BREENE, Appellants,

v.

BATES B. BURNETTE, Curator of the Estates of EDITH DURANT a EDNA DURANT, Minors; THE GALBREATH OIL & GAS CO., a THE LAUREL OIL & GAS CO., Appellees.

Petition for Appeal.

To the Honorable Chief Justice and Associate Justices of the Uni States Court of Appeals in the Indian Territory:

Your petitioners, Robert W. Morrison, Charles W. S. Cobb, Jo E. McKinney, William J. Breene and Frank M. Breene, the app lants in the above entitled cause, respectfully show that the ab entitled cause is now pending in the United States Court of Appe in the Indian Territory and a judgment and decree has been r dered therein confirming a judgment and decree of

98 United States Court in the Indian Territory, in and for Western Judicial District, against your petitioners ab named, and that the matter in controversy in said action exceeds sum of One Thousand Dollars besides costs, and that the juris tion of none of the other courts above mentioned is dependent any wise upon the opposite parties to this suit or controversy be

aliens, or citizens, of the United States, or citizens of different states, and that this cause does not arise under the patent laws, or revenue laws, or criminal laws, and that it is not an admiralty case, and that it is a proper case to be reviewed by the United States Circuit Court of Appeals for the Eighth Circuit, upon appeal.

And your petitioners would therefore respectfully pray that an appeal from the United States Court of Appeals in the Indian Territory to the United States Circuit Court of Appeals for the Eighth Circuit be granted in order that the errors complained of in the assignment of errors herein presented may be reviewed and, if error be found, corrected according to the laws and customs of the United States of America.

ROBERT W. MORRISON,
CHARLES W. S. COBB,
JOHN E. McKINNEY,
WILLIAM J. BREENE, AND
FRANK M. BREENE,
Appellants,

By Their Attorneys, JOHN J. SHEA &
JOHN R. THOMAS.

Allowed,
WM. H. H. CLAYTON,
Justice of the United States Court of Appeals in the Indian Territory.

Endorsed: No. 806. In the matter of the Guardianship of Edith and Edna Durant, minors. R. W. Morrison *et al.*, Appellants, Petition for Appeal. Filed in the office of the Clerk of U. S. Court of Appeals, Ind. Ter. Nov. 26, 1906. Wm. P. Freeman, Clerk.

And on said 26th day of November, A. D. 1906, there was also filed in the office of the Clerk of said Court, an Order of Appeal, in said cause, which is in the words and figures following, to-wit:

In the United States Circuit Court of Appeals, Eighth Circuit.

In the Matter of the Guardianship of EDITH DURANT and EDNA DURANT, Minors, No. 806; BATES B. BURNETTE, Curator.

99 ROBERT W. MORRISON, CHARLES W. S. COBB, JOHN E. McKINNEY, WILLIAM J. BREENE, and FRANK M. BREENE, Appellants,

v.

BATES B. BURNETTE, Curator of the Estate of EDITH DURANT and EDNA DURANT, Minors; THE GALBREATH OIL & GAS COMPANY, and THE LAUREL OIL & GAS COMPANY, Appellees.

Order.

Now on this 26th day of November, A. D., 1906, on the presentation of the assignment of errors and petition for appeal by the above

named parties appellant, the appeal prayed for is hereby granted, and the Clerk of the United States Court of Appeals in the Indian Territory is hereby ordered and directed to certify to the United States Circuit Court of Appeals for the Eighth Circuit, at St. Louis, Missouri, a full, true and correct transcript of all proceedings had and done in this case.

WM. H. H. CLAYTON,
Judge of the United States Court of Appeals in the Indian Territory.

Endorsed: No. 806. In the matter of the Guardianship of Edith and Edna Durant, minors. R. W. Morrison, *et al.*, Appellants. Order of Appeal. Filed in the office of Clerk of U. S. Court of Appeals, Ind. Ter. Nov. 26, 1906. Wm. P. Freeman, Clerk.

And on said 26th day of November, A. D. 1906, there was also filed in the office of the Clerk of said Court, an Assignment of Errors, in said cause, which is in the words and figures following, to-wit:

In the United States Circuit Court of Appeals, Eighth Circuit.

In the Matter of the Guardianship of EDITH DURANT and EDNA DURANT, Minors; BATES B. BURNETTE, Curator.

Court No. 806.

ROBERT W. MORRISON, CHARLES W. S. COBB, JOHN E. MCKINNEY, WILLIAM J. BREENE, and FRANK M. BREENE, Appellants,
v.
BATES B. BURNETTE, Curator of the Estates of EDITH DURANT and EDNA DURANT, Minors; THE GALBREATH OIL & GAS COMPANY, and THE LAUREL OIL & GAS COMPANY, Appellees.

Assignment of Errors.

Now comes Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene, and say that in the foregoing record and proceedings there is manifest
100 error in the action and rulings of the United States Court in Indian Territory for the Western Judicial District, as well as the actions, rulings and opinion of the United States Court of Appeals in the Indian Territory, in this, to-wit:

First. That the revocation, *recision*, or setting aside by the said United States Court sitting at Sapulpa on the 12th and 13th days of June, 1906, of the order, judgment or decree of confirmation in favor of said appellants and entered of record June 11th, 1906, was error in that the Court entered the said order, judgment, or decree of revocation, *recision*, or setting aside upon a mere motion, and not upon an original bill, petition, or other like application by proper party — parties duly filed or submitted to said Court prior to the

entry of the order revoking the judgment, or decree of confirmation in favor of the said appellants.

Second. That the said United States Court sitting as aforesaid in revoking, rescinding or setting aside the order, judgment, or decree of confirmation, entered of record by said Court June 11, 1906, wherein and whereby the said Court ratified, approved, and confirmed the title of said appellants to the leases in question pursuant to the said judicial sale of March 5th, 1906, did commit error in that the Court without authority and in prejudice of the lawful rights of the appellants entered under dates of June 12th and June 13th, 1906, an order or decree revoking the said order or decree in favor of the appellants aforesaid, and so did upon the *ex parte* application of third party or parties moving the Court to that end by mere motion without any precedent, offer, or indemnity to protect or save harmless the said appellants from loss of their moneys, interests, or reasonable outlays, or other like reasonable losses or expenditures in the premises by reason of their being *bona fide* purchasers for value without notice and making payment accordingly at the said judicial sale of March 5th, 1906.

Third. That the said United States Court sitting as aforesaid in revoking, rescinding, or setting aside the said order or decree of confirmation in favor of the appellants on June 11, 1906, as aforesaid, committed error in that the same was so revoked, rescinded, or set aside without legal or adequate notice to the appellants in the premises.

Fourth. That the said United States Court sitting as aforesaid, having on the 11th day of June, 1906, entered judgment of confirmation in favor of the appellants wherein and whereby the said Court ratified, approved, and confirmed their title to said leases (subject only to the ultimate adjudication of the Secretary of the
101 Interior) as required in virtue of the said judicial sale of March 5th, 1906, committed error in rescinding, revoking, or setting aside thereafter, to-wit: under date of June 12th and June 13th, 1906, the said order or decree of confirmation in favor of the appellants for the reason that the said decree of confirmation in favor of the appellants could not be revoked, rescinded, or set aside except for fraud in connection with or materially affecting the said sale of March 5th, 1906, or by reason of mistake or improvidence on the part of the Court in entering the said judgment of confirmation in favor of the appellants, neither of which, to-wit: fraud or judicial mistake existed, or was alleged, as appears by the record in the case.

Fifth. That the decree of June 11th, 1906, confirming title as aforesaid in the appellants to the leases mentioned could not be revoked, rescinded, or set aside upon the ground taken by the court to that end, to-wit: That much better leases could be made and much higher [bonusses] obtained after the entry of the said order or decree of confirmation in favor of the appellants as aforesaid.

Sixth. That in revoking the said order or decree of confirmation in favor of the said appellants as aforesaid the said court committed error for the reason that the said Court was moved to do so and did

so for matters and upon grounds arising and occurring after the entry of the said decree of confirmation in favor of the said appellants.

Seventh. The learned Court erred in rescinding, revoking or setting aside the order or decree of confirmation entered of record June 11th, 1906, in favor of the appellants for the reason that there was, as shown by the record, no fraud affecting the said judicial sale of March 5th, 1906, nor mistake or improvidence on the part of the court in confirming said sale in favor of the appellants.

Eighth. That the said Court erred in setting aside the order or decree of confirmation in favor of the appellants June 11th, 1906, for the reason that the said Court was moved to do so after the entry of said order or decree in favor of the appellants by party or parties having no lawful right whatever in the premises to challenge, attack, or impair in any particular the rights and titles acquired by the appellants in virtue of the said judicial sale of March 5th, 1906. That inasmuch as no question of fraud was proven or alleged, nor question of irregularity raised touching or concerning the said judicial sale of March 5th, 1906, or the rights of the appellants as purchasers thereat, and further, as the price then paid, as disclosed by the record and proceedings herein, was legally fair and
102 adequate at the time of the sale, it became, at the time of the rendition of the order or decree of confirmation in favor of the appellants, the lawful duty of the Court to then render such decree, and, having done so, the power of the court over the subject matter and rights of the appellants as *bona fide* purchasers at said sale, then and there became exhausted.

Ninth. That the said court sitting as aforesaid, having, pursuant to its legal duty in the premises entered the said order or decree of confirmation in favor of the appellants, advisedly and after due consideration, erred in thereafter rescinding, revoking or setting aside the same at the instance of third party or parties appearing therein and thereafter and alleging no fraud or irregularity in connection with the said sale of March 5th, 1906, but simply then offering to pay more for the leases than they brought pursuant to the said judicial sale of March 5th, 1906; that the said Court, sitting as aforesaid, erred in rescinding, revoking or setting aside the order or decree of confirmation in favor of the appellants at the instance of parties thereafter and therein appearing and offering to bid more for the said leases, solely upon the ground of the alleged appreciation in value thereof occurring subsequent to the said judicial sale of March 5th, 1906.

Tenth. Inasmuch as the said leases in question sold at the said judicial sale of March 5th, 1906, were on the lands of the Creek minors, the said United States Court, sitting as aforesaid, had no power or jurisdiction over the same, or the subject matter thereof, except as pertained to the legal appointment and qualification of the guardian for said minors, and the due and legal regularity of the sale of March 5th, 1906.

[Twelfth.] That the said United States Court, sitting as afore-

said, erred in the premises for the reason that the resale of the said leases pursuant to the said Court's order or decree of revocation under the dates of June 12th and June 13th, 1906, was without advertisement, or proper advertisement, and in general and flagrant violation of its own established written or printed rules in connection with sales upon the lands of Creek minors.

[Thirteenth.] Inasmuch as the record in the case discloses there was no fraud, accident, improvidence or mistake touching or concerning the said judicial sale of March 5th, 1906, or the entry of the order or decree of confirmation by the court June 11th, 1906, as aforesaid, the said order or decree of confirmation became a legal finality, subject only to the ultimate and legal determination or action of the Secretary of the Interior in the premises.

103 [Fourteenth.] That the order or decree [confirming] the leases in the appellants herein as aforesaid was a final order or decree of the court entered after due consideration and deliberation in which no oversight, fraud, accident, or mistake entered into or affected said decree or its subject matter, and said Court therefore erred, as is apparent of record herein, in arbitrarily, upon the motion or action of third party or parties or its own motion, or both, in setting aside the order or decree of confirmation in favor of the appelant entered as aforesaid June 11th, 1906.

[Fifteenth.] That the said Court, sitting as aforesaid, erred in refusing to grant the motion of the appellants, per their attorney, John J. Shea, presented to and filed in said Court, June 14th, 1906, to set aside the said order or decree of revocation and to re-instate the order of June 11th, 1906, approving and confirming said oil and gas leases upon the lands of said minors in said appellants, for the reasons, *inter alia*, that the said sale of March 5th, 1906, was judicial and legally regular; for a fair and adequate price at the time; that the said sale had been duly confirmed June 11th, 1906, by the court; that the said appellants and vendees had been guilty of no fraud in the premises; that there was no fraud, improvidence, accident or mistake influencing the Court to enter said order or decree of confirmation; that at the time such order or decree of confirmation was entered in favor of the appellants there was no legal objection or right of legal objection apparent of record or otherwise against the sale; that the said decree of confirmation in favor of the appellants was and became a legal finality and subject to no further power or control thereover on the part of the said court; that the court was unlawfully influenced June 12th and June 13th, 1906, to abrogate or rescind, and did abrogate or rescind the said order or decree of confirmation in favor of appellants upon the mere *ex parte* motion of third party or parties having no legal standing to challenge or attack the validity of said order of confirmation in favor of the appellants without notice, or adequate legal notice, or indemnity, or proper offer of indemnity to the appellants as *bona fide* purchasers for value in the premises; and that the said Court was influenced unlawfully as aforesaid, and did in violation of the lawful rights of the appellants in the manner aforesaid order against their protest a resale of the said leases in question without conformity or attempted

conformity to the established rules of said Court, and upon the grounds that after the entry of the decree or order of confirmation in favor of the appellants as aforesaid, third party or parties, having no legal standing to object in any manner to said judicial sale of March 5th, 1906, appeared in said Court, and for reason of
104 the increase or alleged increase in the value of said leases occurring subsequent to March 5th, 1906, offering to pay more therefor than the price for which the same was sold pursuant to the sale of March 5th, 1906.

[Sixteenth.] That the United States Court in and for the Western Judicial District of the Indian Territory had no power and was without jurisdiction to order and direct a resale of the lands of said minors on June 12th and 13th, 1906, for that the order and decree of June 11th, 1906, confirming and approving the oil leases to Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene, was a final adjudication and decree of the court and vested title in the said leases in Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene; and that the Court in setting aside the same exceeded its jurisdiction, and was without any power and jurisdiction to then order a resale of said property; and that all the proceedings leading up to and including the said resale of said leases on June 13th 1906, the master's report of the same, and the order directing the execution of the leases thereunder, and the order confirming said leases to the Galbreath Oil & Gas Co. and The Laurel Oil & Gas Co., were all wrongfully made, for that the Court at that time had no jurisdiction to make or enter any such orders; and for the further reason that Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene having become vested with title to said leases by the final decree of the Court, were not in court and were not brought into court, by any process and that said Court, without process, had no jurisdiction over them to revoke or rescind said final decree.

[Seventeenth.] That the said United States Court of Appeals in the Indian Territory erred in not reversing the judgment or decree of the United States Court for the Western Judicial District of the Indian Territory, because of each of the several errors of the latter court as to its actions and rulings as to each and every one of the errors above specified.

[Eighteenth.] That the said United States Court of Appeals in the Indian Territory erred in rendering judgment and decree so that under the law the decree of the United States Court in and for the Western Judicial District of the Indian Territory became operative, for the reason that the said United States Court for the Western Judicial District of the Indian Territory entered the order and decree confirming the leases to the Galbreath Oil & Gas Co. and The Laurel Oil & Gas Co. without jurisdiction.

105 Wherefore, and for divers other reasons apparent on the face of the record, Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene, pray that said proceedings as well as said judgments and decrees of both the said United States Court for the Western Judicial District of the

Indian Territory and the said United States Court of Appeals in the Indian Territory be reversed.

JOHN J. SHEA,
Attorneys for Appellants.

R. B. THOMPSON,
H. H. MONTGOMERY,
EDMUND C. BREENE,
JOHN R. THOMAS,
Of Counsel.

Endorsed: No. 806. In the matter of the Guardianship of Edith and Edna Durant, minors. R. W. Morrison, *et al.,* Appellants. Assignment of Errors. Filed in the Office of the Clerk of U. S. Court of Appeals, Ind. Ter. Nov. 26, 1906. Wm. P. Freeman, Clerk.

And on said 26th day of November, A. D. 1906, there was also filed in the office of the Clerk of said Court, a Cost Bond, in said cause, which is in words and figures, following, to-wit:

Know all Men by These Presents: That we, Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene, are held and firmly bound unto Bates B. Burnette, curator of the estates of Edith Durant and Edna Durant, minors, The Galbreath Oil & Gas Company and The Laurel Oil & Gas Company, in the full and just sum of Five Hundred Dollars to be paid to the said Bates B. Burnette, curator of the estates of Edith Durant and Edna Durant, minors, The Galbreath Oil and Gas Company and The Laurel Oil and Gas Company, their heirs, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this the 26th day of November, A. D., 1906.

Whereas, lately at the regular term of the United States Court of Appeals in the Indian Territory, in a suit depending in said Court, in the matter of the estates of Edith Durant and Edna Durant, wherein Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene were appellants, and Bates B. Burnette, curator of the estates of Edith Durant
106 and Edna Durant, minors, The Galbreath Oil & Gas Co., and The Laurel Oil & Gas Co., were appellees, a judgment and decree was rendered against the said Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene, and the said Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene, and the said Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene having been granted an appeal from the said court to reverse the judgment and decree in the aforesaid suit and a citation directed to the said Bates B. Burnette, curator of the estates of Edith Durant and Edna Durant, minors, the Galbreath Oil & Gas Co., and The Laurel Oil & Gas Co., citing and admonishing them to be and appear in the United States Circuit

Court of Appeals for the Eighth Circuit, at the City of Saint Louis, Missouri, sixty days from and after the date of said citation.

Now the condition of the above obligation is such that if the said Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene shall prosecute said appeal to effect, and answer all costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

ROBERT W. MORRISON,
CHARLES W. S. COBB,
JOHN E. McKINNEY,
WILLIAM J. BREENE,
FRANK M. BREENE,
By JOHN J. SHEA, *Their Att'y.*
NATIONAL SURETY COMPANY,
By E. J. PHELPS, *Attorney-in-Fact.*

Sealed and delivered in the presence of
J. F. GASKILL.
JOHN R. THOMAS.

Approved November 26th, 1906.
WM. H. H. CLAYTON,
Associate Justice of the Court of Appeals in the Indian Territory.

Endorsed: No. 806. In the matter of the Guardianship of Edith and Edna Durant, minors. R. W. Morrison, *et al.*, Appellants. Filed in the office of the Clerk of U. S. Court of Appeals, Ind. Ter., Nov. 26, 1906. Wm. P. Freeman, Clerk.

107 UNITED STATES OF AMERICA, *Indian Territory:*

In the Court of Appeals, *ss.*

I, William P. Freeman, Clerk of the United States Court of Appeals in the Indian Territory, do hereby certify that the foregoing is a full, true and complete transcript of the record and proceedings, together with all things concerning the same, of the said Court, in the cause therein named, as fully as the same remains of record and on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at office in the City of South McAlester, Indian Territory, this 15th day of December, A. D. 1906.

[Seal of the United States Court of Appeals in the Indian Territory.]

WM. P. FREEMAN,
Clerk United States Court of Appeals in the Indian Territory.

Filed Dec. 17, 1906.

JOHN D. JORDAN, *Clerk.*

108 *(Appearance of Mr. W. B. Homer, as Counsel for Appellants.)*

On the twelfth day of January, A. D. 1907, the appearance of Mr. W. B. Homer, as counsel for appellants, was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 2529.

ROBERT W. MORRISON ET AL., Appellants,
vs.
BATES B. BURNETTE, Curator, &c., *et al.*

The Clerk will enter my appearance as Counsel for the Appellants.
W. B. HOMER.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2529. Robert W. Morrison, *et al.*, Appellants, *vs.* Bates B. Burnette, Curator &c., *et al.* Appearance. Filed Jan. 12, 1907, John D. Jordan, Clerk. W. B. Homer, Counsel for Appellants.

(Appearance of Messrs. Hutchings, Murphey & German, as Counsel for Appellee, Laurel Oil and Gas Company.)

And on the fifteenth day of January, A. D. 1907, the appearance of Messrs. Hutchings, Murphey & German, as counsel for the appellee Laurel Oil and Gas Company, was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 2529.

ROBERT W. MORRISON ET AL., Appellants,
vs.
BATES B. BURNETTE, Curator, &c., *et al.*

The Clerk will enter my appearance as Counsel for the Appellees, Laurel Oil and Gas Company.

109 WILLAM T. HUTCHINGS,
GEO. A. MURPHEY AND
WILLIAM P. Z. GERMAN,
Counsel for Laurel Oil & Gas Company.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2529. Robert W. Morrison, *et al.*, Appellants, *vs.* Bates B. Burnette, Curator &c., *et al.* Appearance. Filed Jan. 15, 1907, John D. Jordan, Clerk. William T. Hutchings, George A. Murphey, William P. Z. German, Counsel for Appellees.

(*Appearance of Mr. Preston C. West, as Counsel for Appellees.*)

And on the seventeenth day of January, A. D. 1907, the appearance of Mr. Preston C. West, as counsel for the appellees, was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 2529.

ROBERT W. MORRISON ET AL., Appellants,
vs.
BATES B. BURNETTE, Curator, &c., *et al.*

The Clerk will enter my appearance as Counsel for the Appellees.
PRESTON C. WEST.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2529. Robert W. Morrison, *et al.*, Appellants, *vs.* Bates B. Burnette, Curator &c., *et al.* Appearance. Filed Jan. 17, 1907, John D. Jordan, Clerk. Preston C. West, Counsel for Appellees.

(*Appearance of Messrs. Soper, Huckleberry & Owen, as Counsel for Appellees.*)

And on the seventeenth day of January, A. D. 1907, the appearance of Messrs. Soper, Huckleberry & Owen, as counsel for the appellees, was filed in said cause, in the words and figures following, to-wit:

110 United States Circuit Court of Appeals, Eighth Circuit.

No. 2529.

ROBERT W. MORRISON ET AL., Appellants,
vs.
BATES B. BURNETTE, Curator, &c., *et al.*

The Clerk will enter my appearance as Counsel for the Appellees.
P. L. SOPER,
J. H. HUCKLEBERRY.
THOS. H. OWEN.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2529. Robert W. Morrison, *et al.*, Appellants, *vs.* Bates B. Burnette, Curator &c., *et al.* Appearance. Filed Jan. 17, 1907, John D. Jordan, Clerk. P. L. Soper, J. H. Huckleberry, Thomas H. Owen, Counsel for Appellees.

(Appearance of Mr. John J. Shea, as Counsel for the Appellants.)

And on the twenty-third day of January, A. D. 1907, the appearance of Mr. John J. Shea, as counsel for the appellants, was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 2529.

ROBERT W. MORRISON ET AL., Appellants,
vs.
BATES B. BURNETTE, Curator, &c., *et al.*

The Clerk will enter my appearance as Counsel for the Appellants.
JOHN J. SHEA.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2529. Robert W. Morrison, *et al.*, Appellants, *vs.* Bates B. Burnette, Curator &c., *et al.* Appearance. Filed Jan. 23, 1907, John D. Jordan, Clerk. John J. Shea, Counsel for Appellants.

111 *(Stipulation to Dismiss the Appeal and Writ of Error as to Galbreath Oil and Gas Company, Only.)*

And on the thirteenth day of May, A. D. 1907, a stipulation to dismiss the appeal in cause No. 2529 and the writ of error in cause No. 2530 as to the Galbreath Oil and Gas Company, only, was filed, in the words and figures following, to-wit:

In the United States Court of Appeals, Eighth Circuit.

No. 2529.

ROBERT W. MORRISON ET AL., Appellants and Plaintiffs in Error,
v.
BATES B. BURNETTE, Curator of Estates of EDITH and EDNA DURANT, Minors, *et al.*, Appellees and Defendants in Error.

Stipulation for Dismissal.

It is agreed by and between the Galbreath Oil and Gas Company and Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, Wm. J. Breene and Frank M. Breene, that the above entitled action may be dismissed as to the parties to this stipulation and so far as the same relates to the land of Edna Durant and to the following portion of the land of Edith Durant, to-wit:

The E. /2 of the N. W. 4 of Sec. 15, Twp. 17, Range 12, Creek Nation, Indian Territory, but that this dismissal shall in no wise

affect the litigation as to the 80 acres owned by Edith Durant in Sec. 11, twp. 17, Range 12 and shall not affect the issues in the case now pending in this Court between the Laurel Oil and Gas Company and Robert W. Morrison, Chas. W. S. Cobb, John E. McKinney, Wm. J. Breene and Frank M. Breene as to the ownership of the lease on the last described land.

Witness our hands this 10th day of May, 1907.

ROBERT W. MORRISON ET AL.,
By JOHN J. SHEA, *Their Att'y.*
112 P. L. SOPER,
JAS. H. HUCKLEBERRY,
THOS. H. OWEN,
PRESTON C. WEST,
Attorneys for Appellees and Defendants in Error Galbreath Oil & Gas Co. and Bates B. Burnette.

(Endorsed:) No. 2529. Robert W. Morrison, *et al.*, Appellants, *vs.* Bates B. Burnette, Curator, etc., *et al.* No. 2530. Robert W. Morrison, *et al.*, Pl'ffs in Error, *vs.* Bates B. Burnette, Curator &c., *et al.* Stipulation to dismiss the appeal and writ of error as to Galbreath Oil and Gas Company, only. Filed May 13, 1907, John D. Jordan, Clerk.

(*Appearance of Mr. William J. Breene as Counsel for Appellants.*)

And on the twentieth day of May, A. D. 1907, the appearance of Mr. William J. Breene, as counsel for the appellants, was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 2529.

ROBERT W. MORRISON ET AL., Appellants,
vs.
BATES B. BURNETTE, Curator, etc., *et al.*

The Clerk will enter my appearance as Counsel for the Appellants.
WM. J. BREENE.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2529. Robert W. Morrison, *et al.*, Appellants, *vs.* Bates B. Burnette, Curator &c., *et al.* Appearance. Filed May 20, 1907, John D. Jordan, Clerk. William J. Breene, Oil City, Pa., Counsel for Appellants.

(*Order of Submission.*)

And on the twentieth day of May, A. D. 1907, in the record of the proceedings of the United States Circuit Court of Appeals for the Eighth Circuit is an order of submission in said cause, in the words and figures following, to-wit:

113 United States Circuit Court of Appeals, Eighth Circuit, May Term, 1907.

MONDAY, *May* 20, 1907.

No. 2529.

ROBERT W. MORRISON ET AL., Appellants,
vs.
BATES B. BURNETTE, Curator, etc., *et al.*

Appeal from the United States Court of Appeals in the Indian Territory.

This cause having been called for hearing in its regular order, argument was commenced by Mr. William J. Breene for appellants, continued by Mr. George A. Murphey for appellee, Laurel Oil and Gas Company, and concluded by Mr. J. J. Shea for appellants.

Thereupon, this cause was submitted to the Court on the transcript of record from said United States Court of Appeals and the briefs of counsel filed herein.

(*Decree of Dismissal as to Galbreath Oil and Gas Company.*)

And on the twenty-first day of May, A. D. 1907, in the record of the proceedings of said Circuit Court of Appeals is a decree of dismissal as to the Galbreath Oil and Gas Company, in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1907.

TUESDAY, *May* 21, 1907.

No. 2529.

ROBERT W. MORRISON ET AL., Appellants,
vs.
BATES B. BURNETTE, Curator, etc., *et al.*

Appeal from the United States Court of Appeals in the Indian Territory.

This cause having been called for hearing, and a stipulation to dismiss this cause as to the Galbreath Oil and Gas Company one of the appellees, having been filed; Therefore, in pursuance of said stipulation, and in accordance with the terms and conditions contained therein; It is now here ordered, adjudged and decreed by this Court, that the appeal as to said Galbreath Oil and Gas Company,

be, and the same is hereby, dismissed without costs to either
114 party in this Court.
May 21, 1907.

Opinion.

And on the tenth day of July, A. D. 1907, an opinion of the United States Circuit Court of Appeals for the Eighth Circuit was filed in said cause, in the words and figures following, to-wit:

115 United States Circuit Court of Appeals, Eighth Circuit.

No. 2529, May Term, A. D. 1907.

ROBERT W. MORRISON ET AL., Appellants,
vs.
BATES B. BURNETTE, Curator of the Estates of EDITH DURANT and EDNA DURANT, Minors, *et al.*, Appellees.

Appeal from the United States Court of Appeals in the Indian Territory.

Mr. W. J. Breene and Mr. J. J. Shea (Mr. W. B. Homer and Mr. Edmond C. Breene were with them on the brief) for appellants.
Mr. George A. Murphey (Mr. William T. Hutchings and Mr. William P. Z. German were with him on the brief) for appellees.

Before Sanborn and Hook, Circuit Judges and Phillips, District Judge.

Syllabus.

1. APPEAL AND ERROR—ASSIGNMENT REQUISITE FOR ERRORS NOT JURISDICTIONAL—CROSS ERRORS NOT ASSIGNABLE.—An appellate court will notice without objection or assignment the lack of jurisdiction of an inferior court.
   But alleged errors in the exercise of its jurisdiction can be presented only by appeal or writ of error and a proper assignment of errors. Cross errors are not judicable in a federal appellate court.
2. BILL OF EXCEPTIONS—UNNECESSARY IN EQUITY.—A bill of exceptions has no function and is unnecessary in any equity proceeding in the absence of a trial of some issue by a jury, because the appeal brings the entire record, including the evidence, objections and exceptions to the appellate court.
3. SAME—APPEALS TO COURT OF APPEALS OF INDIAN TERRITORY TAKEN AS TO COURT OF APPEALS OF EIGHTH CIRCUIT.—Appeals to the Court of Appeals of the Indian Territory from orders, judgments and decrees of the trial courts made in the exercise of their probate jurisdiction must be taken, and the

practice therein is governed by the method of taking and the practice in appeals from the Circuit Courts to the Circuit Court of Appeals of the Eighth Circuit (Public Acts, 1904-05, p. 1081, c. 1479, §12) and not by §§1385, 1386 Mansfield's Digest of the Laws of Arkansas.

116 4. INDIAN MINORS' ALLOTMENTS—SECRETARY OF INTERIOR HAS NO JURISDICTION OF LEASES OF.—Leases of allotments of Indian minors in the Indian Territory confirmed and approved by the trial courts of that territory since April 26, 1906, are not subject to the approval or disapproval of the Secretary of the Interior, but the orders of the courts confirming and approving them are final.

5. FINAL DECISION—ORDER AVOIDING CONFIRMATION OF SALE OF LEASE IS.—A decision which completely determines the rights of parties in the pending proceeding, who are not jointly liable with others, is a final decision reviewable by appeal or writ of error, under the acts of Congress.

An order which avoids a confirmation of a sale and an approval of a lease of an allotment of an Indian minor is a final decision, because it completely determines the right of the purchaser thereunder.

6. JUDICIAL SALE—AVOIDANCE—EFFECT OF RULE THAT COURTS HAVE POWER OVER ORDERS AND DECREES DURING TERM.—The general rule that the courts have power over their judgments, decrees and orders during the term at which they are rendered does not give them jurisdiction to avoid confirmed judicial sales without cause at the term at which they are confirmed, because the rights of purchasers vest thereunder upon confirmation.

The only effect of this rule on such sales is to enable the courts to consider alleged causes for avoiding them during the term on motions or orders to show cause upon due notice without the filing of formal bills for that purpose.

7. JUDICIAL SALES—BEFORE CONFIRMATION OPENING FOR FURTHER BIDS ALLOWABLE FOR GREAT INADEQUACY OF PRICE AND SLIGHT UNFAIRNESS.—A successful bidder under an order or decree of court at a sale which is subject to confirmation by the court is a purchaser from the announcement of the sale to him by the officer and may thereafter be compelled to complete his purchase.

Before confirmation a sale will not be set aside for mere inadequacy of price unless it is very great, yet if the inadequacy be great, slight circumstances of unfairness in the conduct of the party benefited will be sufficient to open it for farther bids.

8. JUDICIAL SALE—VOIDABLE AFTER CONFIRMATION FOR FRAUD OR MISTAKE ONLY—IT MAY NOT BE OPENED FOR BETTER BIDS.—After confirmation of a judicial sale the rights of the purchaser have vested. Neither inadequacy of price nor offers of higher prices, nor anything but fraud, mistake, accident or some other cause for which equity would avoid a like sale between private parties, will warrant a court in avoiding the sale or in opening it for other bids.

117 *Statement.*

Pursuant to an order of the United States Court in the Western District of Indian Territory, which has the jurisdiction of a probate court, a lease of 160 acres of mineral land which had been allotted to Edith Durant, a minor Indian, was advertised for sale on sealed bids by Monday Durant, her guardian, and on the day of sale, March 5, 1906, the highest bonus bid for it was $3490, and this bid was made by Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene, who are now the appellants in this case, and will hereafter be so styled. The Laurel Oil & Gas Company, a corporation, one of the appellees, bid at the same time at this sale $2850 for this lease. On March 7, 1906, the appellants deposited the $3490 with the court and on March 9, 1906, the guardian executed the lease of the land to the appellants and they applied to the court for the confirmation of the sale and the approval of the lease. After notice to all parties in interest and a hearing the court on June 11, 1906, "ordered, adjudged and decreed that the lease executed by Monday Durant, guardian of Edith Durant, minor, on the 9th day of March, 1906, (to the appellants) be, and the same is hereby in all things approved, ratified and confirmed." On the next day the Laurel Company, the unsuccessful bidder at the former sale, made a motion for leave to bid again for the lease of this land and offered to bid a bonus of $8000. Thereupon the court set aside the order of June 11, 1906, for the sole reason that a higher bonus could be obtained, and on June 14, 1906, it sold a lease of 80 acres of this land on the same terms as the former to the Galbraith Oil & Gas Company for a bonus of $16,800 and a lease of the other eighty acres on the same terms to the Laurel Oil & Gas Company for $2000. The lease to these parties were subsequently made by the guardian and the court confirmed these sales and approved these leases. The appellants then sued out a writ of error from the Court of Appeals of the Indian Territory to reverse the order which set aside the decree of confirmation of the sale and of approval of the lease to them and they also appealed from that order. The Court of Appeals of the Indian Territory consolidated the two cases, heard them as an appeal in equity and affirmed the order below because the court was evenly divided in opinion. The appellants have brought the latter judgment here by writ of error and also by appeal.

Since the case came to this court the controversy over the eighty acres leased to the Galbraith Oil & Gas Company has been settled and the only dispute remaining relates to the eighty acres leased to the Laurel Oil & Gas Company under the second lease.

SANBORN, *Circuit Judge*, after stating the case as above, delivered the opinion of the court:

As this is a proceeding in equity, the writ of error must be dismissed and the case must be considered and decided upon the appeal, and it is so ordered.

118 The real question in the case is, may a court of equity during the term at which the confirmation is made, lawfully avoid an executed judicial sale which it has confirmed, on the sole ground that a larger price may be obtained by a second sale?

Before entering upon the consideration of this question some preliminary objections must be considered. Counsel for the appellees insist that this issue is not within the jurisdiction of this court (1) because the writ of error issued by the Court of Appeals of the Indian Territory to the trial court was not allowed by any Judge of the former court or by the trial Judge, (2) because the petition for the writ of error and the assignment of errors thereon show no filing marks and (3) because the assignment of the errors of the trial court was not filed until 36 days after the appeal was taken, and they cite *U. S. v. Goodrich*, 54 Fed. 21, 4 C. C. A. 160, and *Flahrity v. Union Pac. Ry. Co.*, 56 Fed. 908, 6 C. C. A. 167. But these objections do not assail the jurisdiction of the Court of Appeals of the Indian Territory, for this is a proceeding in equity reviewable by appeal, an appeal was taken and that court had ample power to hear and decide the merits of the cases upon that appeal either upon an assignment of errors filed out of time or without any assignment whatever. A hearing on an assignment filed too late may have been error, but it was not jurisdictional error. It related merely to the method of the exercise by the appellate court of its undoubted power and not to its total want of jurisdiction, and hence it is reviewable in this court only upon an appeal and a proper assignment of errors. *Rogers v. Penobscot Mining Co.*, ...C. C. A....., ...Fed....., decided at this term.

The appellees have taken no appeal and they cannot invoke the jurisdiction of a federal appellate court to consider or decide questions of this nature by an assignment or by an argument of cross errors. *Guarantee Co. v. Phenix Ins. Co.*, 59 C. C. A. 376, 379, 124 Fed. 170, 173.

Another objection is that the record contains no bill of exceptions. But no bill of exceptions is requisite in a proceeding in equity because the appeal brings the entire record to the appellate court. *Dodge v. Norlin*, 66 C. C. A. 425, 431, 133 Fed. 363, 369; *Teller v. U. S.*, 49 C. C. A. 263, 111 Fed. 119.

Counsel argue that the appeal in this case was not taken in accordance with the method prescribed by Mansfield's Digest of the Laws of Arkansas for appeals from probate courts to circuit courts, (§§1385, 1386) and that on such an appeal a bill of exceptions is essential. But Congress has provided that appeals from the United States Courts in the Indian Territory to the United States Court of Appeals in the Indian Territory should be taken in the same manner as is provided in cases taken by appeal from the circuit courts of the United States to the Circuit Court of Appeals of the United States for the Eighth Circuit. Act March 3, 1905, Public Acts 1904-05, c. 1479, § 12, p. 1081. This appeal was so taken. No bill of exceptions is required to bring the entire record before this court in a suit in equity on an appeal from a cir-
119 cuit court and hence none was essential to do so in the Court of Appeals of the Indian Territory. Sections 1385 and 1386

of Mansfield's Digest are not in force in the Indian Territory and the act of Congress must prevail.

Another contention is that the merits of this case are not reviewable here because the sale and the lease to the appellants were subject to the approval of the Secretary of the Interior and hence the order which avoided their confirmation was not a final order. The United States Courts in the Indian Territory have the powers of courts of probate. 26 Stat. 95, §31; 33 Stat. 573, §2. The act of Congress which approved and ratified the supplemental agreement between the Commissioners of the Creek nation of Indians and the United States, which was approved June 30, 1902, provided that leases by Creek citizens for mineral purposes might be made with the approval of the Secretary of the Interior but not otherwise. 32 Stat. 794, c. 1323, §17. By the act to provide for additional United States Judges in the Indian Territory, approved July 28, 1904, Congress enacted that "full and complete jurisdiction is hereby conferred upon the district courts in said Territory (the Indian Territory) in the settlement of all estates of decedents, the guardianship of minors and incompetents, whether Indians, freedmen, or otherwise." 33 Stat. 573, c. 1824, §2. By the act of March 3, 1905, making appropriations for the expenses of the Indian department and for fulfilling treaty stipulations with the Indian tribes, the Secretary of the Interior and the Attorney General were empowered to investigate leases of allotted lands in the Indian Territory and to bring suits to cancel them for fraud. But the act expressly provides that "no lease made by any administrator, executor, guardian or curator which has been investigated by and has received the approval of the United States Court having jurisdiction of the proceeding shall be subject to suit or proceeding by the Secretary of the Interior or Attorney General" and that "no lease made by any administrator, executor, guardian or curator shall be valid or enforcible without the approval of the court having jurisdiction of the proceeding." 33 Stat. p. 1060, c. 1479. On April 15, 1905, the Secretary of the Interior adopted regulation No. 15, which reads thus: "In cases of transfers, leases, and sales to which minors are parties grantor, the transfer, lease or sale must be made by a guardian, and the lease, deed, or instrument of conveyance must be accompanied by certified copies of the orders of the proper court appointing the guardian and authorizing him to make such transfer, lease, or sale, and it must be fully understood that the department reserves the right to use any means at its disposal for the purpose of ascertaining whether the consideration given is the fair value of the land, and whether the proposed lease or sale is for the best interests of the Indian."

By the act to provide for the final disposition of the affairs of the five civilized tribes in the Indian Territory approved April 26, 1906, (Public Acts 1905-06, pp. 137, 145, 148) commonly called the Curtis Act, the Congress enacted:

120 "SEC. 20. That after the approval of this act all leases and rental contracts, except leases and rental contracts for not exceeding one year for agricultural purposes for lands other than home-

steads, of full-blood allottees of the Choctaw, Chickasaw, Cherokee, Creek and Seminole tribes, shall be in writing and subject to approval by the Secretary of the Interior and shall be absolutely void and of no effect without such approval: *Provided,* That allotments of minors and incompetents may be rented or leased under order of the proper court: *Provided further,* That all leases entered into for a period of more than one year shall be recorded in conformity to the law applicable to recording instruments now in force in said Indian Territory."

"SEC. 29. That all acts and parts of acts inconsistent with the provisions of this act be, and the same are hereby, repealed."

The regulation of the Interior department is effective so far as it is sustained by the acts of Congress and is ineffectual so far as it is in conflict with them. In the light of the legislation to which reference has now been made there are two conclusive answers to the argument that the order avoiding the sale and the lease to the appellants was not a final order. In the first place the acts of April 28, 1904, and April 26, 1906, conferred "full and complete jurisdiction" of the guardianship of minors whether Indians, freedmen, or otherwise, and of the rental or lease of their allotments upon the trial courts of the Indian Territory and the later act repealed all acts and parts of acts inconsistent therewith. The provision of the act of June 30, 1902, that leases for mineral purposes might not be made without the approval of the Secretary of the Interior is inconsistent with the grants of these later acts. There can be no full and complete juridiction of the guardianship of minor Indians and of the leasing of their allotments in a court whose judgments are reviewable and reversible by an officer of another department of the government. Leases of allotments of Indian minors approved by the trial courts of the Indian Territory after April 26, 1906, were therefore not subject to approval or disapproval by the Secretary of the Interior. Those courts had full and complete jurisdiction to sell the leases and to finally approve and confirm the sales and the leases. The lease to the appellants is in this category. It was approved and the sale of it was confirmed on June 11, 1906, and the order which approved it was therefore a final order.

In the second place, even if the lease to the appellants had been subject to the approval of the Secretary of the Interior and if the order of the court confirming the sale and approving the lease had been a mere recommendation of the court to him, yet that order das an indispensable prerequisite to the existence of a valid lease of the minor's land. The Secretary had no power to make or approve such a lease without the approving order of the court. Therefore, the order which avoided the sale and the lease to the appellants deprived them of all right, privilege and opportunity to secure or enforce the lease which the guardian had made to them. A
121 decision which completely determines the rights of parties in the pending proceeding, who are not jointly liable with others, is a final decision reviewable by appeal or by writ of error, under the acts of Congress. *Standley v. Roberts,* 8 C. C. A. 305,

308, 59 Fed. 836, 839, and cases there cited. The appellees cannot escape the main issue in this case, and we turn to its consideration.

Counsel for the appellees indulge in extended argument and the citation of many authorities in support of the position that a court has jurisdiction of its judgments, decrees and orders and may summarily modify, revoke or avoid them, without cause, during the term at which they are made, and from this premise they argue that the avoidance of the sale and lease to the appellants was regular and right. There is an established general rule that a court has power over its judgments, orders and decrees during the continuance of the term at which they are first made. But it is a rule of practice rather than of right. It is a rule that during the term judgments, orders and decrees may be modified and avoided summarily without the necessity of filing a formal bill and commencing a suit for that purpose. Moreover, the power of a court under this rule to modify or avoid without cause is limited to the modification or avoidance of judgments, orders and decrees which determine issues between parties litigant before it and under which no rights have vested. *Ex parte* Lange, 18 Wall. 163; *Bassett v. U. S.*, 9 Wall. 38; *Doss v. Tyack*, 14 How. 297, 312, 313; *Goddard v. Ordway*, 101 U. S. 745, 751, 752; *Henderson v. Carbondale Coal & Coke Co.*, 140 U. S. 25, 40; *Bronson v. Schulten*, 104 U. S., 410, 415; *Aetna Life Ins. Co. v. Board of County Com'rs*, 79 Fed. 575, 25 C. C. A. 94; *Underwood v. Sledge*, 27 Ark. 295, 297; *Bradley v. Slater*, 78 N. W. (Neb.) 1069. It does not empower a court to reverse or avoid without cause a judicial sale during the term at which it has been confirmed, because in such a case the character of vendor has been added to that of judicial tribunal and the rights of the purchaser have vested by virtue of the confirmation of the sale. *Pewabic Mining Co. v. Mason*, 145 U. S., 349, 367. When a court becomes a vendor of an executed sale it is no less bound by the rules of law, of equity and of morals than is a private seller and it may avoid its sale on the same grounds and on no others. Hence the only effect of the rule that a court has power over its orders and decrees during the term in the case of an application to avoid a judicial sale during the term at which it is confirmed, is to relieve the applicant from the necessity of filing a bill in equity for the purpose and to permit him to apply for the relief he seeks upon due notice to the purchaser by motion or order to show cause.

Upon what grounds then may such a sale be lawfully set aside? The old rule in the English chancery was that a bidder at a sale under an order or decree of a court, which was subject to the subsequent report to, and confirmation by the judicial tribunal, was not a purchaser but was one who merely made a tender or offer to purchase and that he could not be compelled to complete his bargain until the confirmation of the sale. This rule, however,
122 has never prevailed in this country and it has been abolished by act of Parliament in England. Act 1867, 30 and 31 Victoria c. 48, §7. On the other hand, the rule is without exception in the national courts, and it has been very generally adopted in the state courts, that the bidder at a sale by a master or receiver under

an order or decree which contemplates a subsequent report and confirmation of the sale becomes a purchaser when the officer announces the sale to him. Thereafter he is liable for and may be compelled to pay the purchase price he bids. Thereafter he may be made to suffer the loss of the destruction or depreciation, and may be permitted to reap the profit of the appreciation of the property. Nevertheless he buys subject to the confirmation or avoidance of the sale by the court, and as he is aware of this fact and the court is selling the property of others and is acting in the dual capacity of trustee for the owners and of a judicial tribunal, it is undoubtedly its duty until confirmation to exercise a wise judicial discretion to secure for the owners the largest price consistent with a just regard for the rights of the bidder. Hence, if a material advance in price is offered and secured by a deposit or by a bond before the sale is confirmed, the sale has sometimes been opened, further bids have been received and a sale to the highest bidder has been confirmed. In *Blanks v. Farmers' Loan & Trust Co.*, 59 C. C. A. 59, 122 Fed. 849, we find that mortgaged lands were offered for sale by a master under a decree of the court and a bid was made and reported of $115,900; before the confirmation of the sale, however, an advance of $10,000 was offered and secured, whereupon the court opened the sale, received 24 other bids and finally confirmed the sale to the highest bidder for $140,000. In North Carolina and some other states it is a settled rule of practice to open the sale and receive new bids upon a guarantee of an advance of ten per cent. *Attorney General v. Roanoke Navigation Co.*, 86 N. C. 408, 413.

But the practice of opening sales upon the offer of a secured bid of ten per cent. advance has never prevailed in the national courts. The rule there is that mere inadequacy of price unless very great is insufficient to warrant the opening of the sale, but that if the inadequacy be great, slight circumstances of unfairness on the part of the party benefited will be sufficient to prevent its confirmation and to warrant the opening of the sale for farther bids. *Ballentine v. Smith, Trustee*, 57 Sup. Ct. Rep. 527, 528; *Files v. Brown*, 59 C. C. A. 403, 407, 124 Fed. 133, 137.

But there is a marked and radical distinction between the situations, the rights of the parties and the established practice before and after the confirmation of the sale. The purchaser bids with full notice that the sale to him is subject to confirmation by the court and that there is a power granted and a duty imposed upon the judicial tribunal when it comes to decide whether or not the sale shall be confirmed to so exercise its judicial power as to secure for the owners of the property the largest practicable returns. He is aware that his rights as a purchaser are subject to the rational exercise of this discretion. But after the sale is confirmed that discretion has been exercised. The power to sell and the power
123 to determine the price at which the sale shall be made has been exhausted. From thenceforth the court and the successful bidder occupy the relation of vendor and purchaser in an executed sale and nothing is sufficient to avoid it which would not set aside a sale of like character between private parties. Hence the

rule is settled and it seems to be universally approved that after confirmation of a judicial sale neither inadequacy of price nor offers of better prices nor anything but fraud, accident, mistake or some other cause for which equity would avoid a like sale between private parties will warrant a court in avoiding the confirmation of the sale or in opening the latter and receiving subsequent bids. *Files v. Brown*, 59 C. C. A. 403, 407, 408, 124 Fed. 133, 137, 138; *Berlin v. Melhorn*, 75 Va. 639, 641; *Pewabic Mining Co. v. Mason*, 145 U. S. 349, 367; *Thomson v. Ritchie*, 30 Atl. (Md.) 708, 710; *Ins. Co. v. Cottrell*, 9 S. E. (Va.) 132, 133; *Fidelity Ins. & Safe-Deposit Co. v. Roanoke St. Ry. Co.*, 98 Fed. 475, 476; *Trull v. Rice*, 92 N. C.. 572, 574; *Pritchard v. Askew*, 80 N. C. 86; *Bank v. Jarvis*, 28 W. Va. 805; *In re Third National Bank*, 9 Biss. 535; *Collier v. Whipple*, 13 Wend. 224, 226; *Watson v. Birch*, 2 Ves. Jr., 51, 54; *Williamson v. Dale*, 3 Johns. Ch. 290, 291; *Ware v. Watson*, 7 De Gex. M. & G. 739, 741; *Condon v. Maynard*, 18 Atl. (Md.) 957, 958; *Smith v. Black*, 115 U. S. 308, 317; *Barling v. Peters*, 25 N. E. (Ill.) 765, 768; *Graffam v. Burgess*, 117 U. S. 180, 191, 192; *Evans v. Maury*, 112 Pa. St. 300, 312.

This rule is so firmly established that it is no longer debatable and the cogent and all sufficient reason for it is that judicial sales would become farces and rational men would shun them and refuse to bid if after the confirmation unsuccessful bidders or dissatisfied litigants could avoid them and secure new sales by offers of higher prices, when they thought the purchase a fortunate one, and thus secure the profits in that event and leave the buyer to suffer the losses if the property depreciated in value or the purchase was unwise. No doubt remains regarding the proper decision in this case. The sale to the appellants was made on notice. The appellee, the Laurel Oil & Gas Company, made an unsuccessful bid at that sale. The lease to the appellants was executed and they paid the amount of their bid to the court or its representative more than three months before the sale was confirmed. The sale was confirmed after notice over objections and after a full hearing. There was no fraud, no mistake, no surprise, no accident, no equitable ground for setting it aside. There was not even evidence that the purchase price was inadequate at the time of the sale. There was nothing but the mere fact that an unsuccessful bidder in March who failed to offer more until after the sale was confirmed in June suddenly became anxious to pay more than $5000 above the price it had offered in March. The natural inference is that this property which is of a speculative nature had appreciated in value between the day of the sale and the day when this offer was made. If so, the purchaser who made the highest bid before the confirmation and paid the representative of the court the amount of it, and not the lower bidder who paid nothing, was, after the confirmation,
124 entitled upon every equitable principle to the benefit of the appreciation. The order of the United States Court for the Western District of the Indian Territory which set aside and avoided the decree of that court confirming the sale and approving the lease to the appellants and the decree of the Court of Appeals of the In-

dian Territory which affirmed it are hereby reversed and this case is remanded to the trial court with directions to affirm and enforce its order and decree which confirmed the sale and approved the lease to the appellants and to take any further proceedings necessary to that end.

Hook, Circuit Judge, concurs in the result.

Filed July 10, 1907.

125 *(Final Decree.)*

And on the tenth day of July, A. D. 1907, in the record of the proceedings of said Circuit Court of Appeals is a decree in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1907.

WEDNESDAY, *July* 10, 1907.

No. 2529.

ROBERT W. MORRISON, CHARLES W. S. COBB, JOHN E. MCKINNEY, WILLIAM J. BREENE, and FRANK M. BREENE, Appellants,

vs.

BATES B. BURNETTE, Curator of the Estates of EDITH DURANT and EDNA DURANT, Minors; THE GALBREATH OIL AND GAS COMPANY, and THE LAUREL OIL AND GAS COMPANY.

Appeal from the United States Court of Appeals in the Indian Territory.

This cause came on to be heard on the transcript of the record from the United States Court of Appeals in the Indian Territory, and was argued by counsel.

On Consideration Whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said United States Court of Appeals, and the decree of the United States Court for the Western District of the Indian Territory, in this cause, be, and the same are each hereby, reversed with costs; and that Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene have and recover against Bates B. Burnette, Curator of the Estates of Edith Durant and Edna Durant, minors, and The Laurel Oil and Gas Company the sum of One Hundred Ninety-Two and 70/100 Dollars for their costs herein expended and have execution therefor, except as against said Curator.

It is further ordered that this cause be, and the same is hereby, remanded to the United States Court for the Western District
126 of the Indian Territory, with directions to affirm and enforce its order and decree which confirmed the sale and approved

the lease to the appellants and to take any further proceedings necessary to that end.

July 10, 1907.

(*Petition of Laurel Oil and Gas Company for Allowance of an Appeal to the Supreme Court of the United States.*)

And on the fifth day of September, A. D. 1907, the petition of the Laurel Oil and Gas Company for the allowance of an appeal to the Supreme Court of the United States was filed in said cause, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Eighth Circuit.

No. 2529.

ROBERT W. MORRISON ET AL., Appellants,
vs.
BATES B. BURNETTE, Curator of the Estates of EDITH and EDNA DURANT, Minors, *et al.*, Appellees.

Petition on Appeal.

The above named appellee, Laurel Oil and Gas Company, feeling itself *ag-rieved* by the decree made and entered in the above entitled cause, on the tenth day of July, 1907, hereby appeals from said order and decree to the Supreme Court of the United States at Washington, District of Columbia, for the reasons specified in the assignment of errors filed herewith, and it prays that this appeal may be allowed and that a transcript of the record, proceedings and papers on which said order and decree was made, duly authenticated, may be sent to the Supreme Court of the United States at Washington, District of Columbia.

WILLIAM T. HUTCHINGS,
GEORGE A. MURPHEY,
WILLIAM P. Z. GERMAN,
Solicitors for Appellee.

Dated this 29th day of August, 1907.

127 (Endorsed:) No. 2529. Robert W. Morrison, *et al.*, Appellants, *vs.* Bates B. Burnette, Curator, &c., *et al.* Petition of Laurel Oil and Gas Company for allowance of an appeal to the Supreme Court of the United States. Filed Sep. 5, 1907, John D. Jordan, Clerk.

(*Assignment of Errors.*)

And on the fifth day of September, A. D. 1907, an assignment of errors by the Laurel Oil and Gas Company was filed in said cause, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Eighth Circuit.

No. 2529.

ROBERT W. MORRISON ET AL., Appellants,
vs.
BATES B. BURNETTE, Curator of the Estates of EDITH and EDNA DURANT, Minors, *et al.*, Appellees.

Assignment of Errors.

Comes now the appellee, Laurel Oil & Gas Company, a corporation, and files the following assignment of errors upon which it will rely upon its appeal from the decree made by this honorable court on July 10th, 1907, in the above entitled cause, as follows:—

I. That the United States Circuit Court in and for the Eighth Judicial Circuit erred in deciding and decreeing that the Court of Appeals of the Indian Territory had jurisdiction to decide the merits of the case upon appeal without an assignment of errors being filed in time.

II. The Court erred in deciding and adjudging that an appeal could be taken directly from the probate courts of Indian Territory to the Court of Appeals for the Indian Territory without first appealing the cause under Mansfield's Digest of the Laws of Arkansas to the United States Court.

III. That the said Court erred in holding and adjudging that the act of Congress of April 26th, 1906, commonly called the "Curtis Act," providing that allotments of minors and incom-
128 petents may be rented or leased under the order of the proper court, rendered it unnecessary to obtain the approval or disapproval of the Secretary of the Interior to such minors' leases, and in decreeing that the lease to appellant belonged to this class, and did not need to have the action of the Secretary of the Interior thereon, said lease having been obtained by them at a guardian's sale holden on the 5th day of March, 1906, prior to the enactment of April 26th, 1906, and in decreeing that the order of the United States Court which approved it was a final order.

IV. That said Court erred in deciding and decreeing that even if the lease to the appellants had been subject to the approval of the Secretary of the Interior that the decision of the United States Court in setting aside the confirmation of such sale is a final decision, reviewable by appeal under the acts of Congress.

V. That the Court erred in adjudging and decreeing that the United States Court had no jurisdiction or power to set aside its order of confirmation of the guardian's sale of March 5th, 1906, during the term at which such confirmation was made upon a showing and guaranty that a much larger bid could be realized at a second sale, without a showing of fraud, accident, mistake or some other cause, other than inadequacy of price.

VI. That the Court erred in deciding and adjudging that the order of the United States Court for the Western District of the

Indian Territory which set aside and avoided the decree of that court confirming the sale and approving the lease to the appellant and the decree of the Court of Appeals of the Indian Territory which affirmed it should be reversed, and in reversing the judgment and decrees of both of said courts.

VII. That the Court erred in not making, rendering and entering a decree in favor of the said appellee, Laurel Oil & Gas Company, and against the appellants, affirming the judgment and decrees entered by the United States Court of the Western Judicial District and of the Court of Appeals of the Indian Territory affirming the decision of the former court, and sustaining the validity of the lease of appellee, the Laurel Oil & Gas Company.

129 VIII. That the Court erred in making, rendering and entering a decree in favor of the appellants and against the appellee, the Laurel Oil & Gas Company, reversing the order and decree of the United States Court for the Western District of the Indian Territory, and the decree of the Court of Appeals of the Indian Territory, which affirmed the order and decree of the former court, for the reasons heretofore more fully set out and enumerated.

In order that the foregoing assignment of errors may be and appear of record, the appellee, Laurel Oil & Gas Company, present the same to the Court and pray that such disposition be made thereof as in accordance with law and the statutes of the United States in such cases made and provided, and the practice in equity requires, and appellee prays a reversal of the judgment and decree entered by said Court in said cause.

WILLIAM T. HUTCHINGS,
GEORGE A. MURPHEY, AND
WILLIAM P. Z. GERMAN,
Solicitors for Appellee, Complainant Herein.

(Endorsed:) No. 2529. Robert W. Morrison, *et al.*, Appellants, *vs.* Bates B. Burnette, Curator, etc., *et al.* Assignment of Errors by Laurel Oil and Gas Company. Filed Sep. 5, 1907, John D. Jordan, Clerk.

(*Appeal Bond of Laurel Oil and Gas Company.*)

And on the fifth day of September, A. D. 1907, the appeal bond of the Laurel Oil and Gas Company was filed in said cause, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Eighth Circuit.

No. 2529.

ROBERT W. MORRISON ET AL., Appellants,
vs.
BATES B. BURNETTE, Curator of the Estates of EDITH and EDNA DURANT, Minors, *et al.*, Appellees.

130 Know all men by these presents:

That we, Laurel Oil and Gas Company, a corporation, as principal, and J. O. Clark and S. L. Clark, as surety, are held and firmly bound unto Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene, and Frank M. Breene, in the full and just sum of Five Thousand Dollars, to be paid to the said Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene, their heirs, executors, administrators and assigns, to which payment well and truly to be made we bind ourselves, our successors, heirs, executors, administrators and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 22nd day of August, in the year of our Lord, nineteen hundred and seven.

Whereas, lately, at the May term of the United States Circuit Court of Appeals for the Eighth Circuit sitting at St. Paul, in a suit depending in said Court relative to the leasing of the lands of Edith and Edna Durant, minors, in which Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene, and Frank M. Breene are appellants, and Bates B. Burnette, curator of the estate of Edith and Edna Durant, minors, the Laurel Oil and Gas Company and the Galbraith Oil and Gas Company are appellees, a final order and decree was rendered reversing the decision of the United States Court of Appeals in the Indian Territory, setting aside certain leases of said minors, Edith and Edna Durant, which order and decree of reversal was rendered against the said appellees, and the said appellee Laurel Oil and Gas Company, has appealed from the said order and decree of reversal, and the said appellee, Laurel Oil and Gas Company, having obtained and order of appeal in said Court allowing an appeal to the United States Supreme Court to reverse the order, decree and judgment so obtained in the aforesaid suit in said Court, and a citation directed by said Court to the said Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene, appellants in said Court is about to be issued, citing and admonishing them to be and appear in the Supreme Court of the United States at Washington, District of Columbia, thirty days from and after the date of said
131 citation.

Now, the condition of the above obligation is such that if the said Laurel Oil and Gas Company, appellee herein, shall prosecute said appeal to final judgment, and answer all damages and costs

that may be awarded against it, if it fail to make its plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

Signed, sealed and delivered in the presence of

LAUREL OIL AND GAS COMPANY,
By H. E. CLARK, *President.*

Attest:
[SEAL.] J. O. CLARK, *Secretary.*

J. O. CLARK.
S. L. CLARK.

Approved this 5th day of September, 1907.
WALTER H. SANBORN,
U. S. Circuit Judge, Eighth Circuit.

STATE OF PENNSYLVANIA, *County of Indiana, ss:*

Before me, John D. Radcliffe, a Notary Public, duly appointed and commissioned in and for the County and State aforesaid, personally appeared J. O. Clark, and S. L. Clark, to me personally well known, and known to be the same persons signing and executing the foregoing bond in appeal of the Laurel Oil and Gas Company, who being duly sworn according to law do severally say that each of them is worth in his own right property in value of not less than Twenty-five thousand ($25000.00) Dollars, and that each of them did sign and execute the above and foregoing bond in appeal as sureties and as his separate act and deed.

Witness my hand and official seal at Glen Campbell, Indiana County, Pennsylvania, the 22nd day of August, A. D. 1907.

[SEAL.] JOHN D. RADCLIFFE,
Notary Public.

My commission expires at the next Session of the Senate 1909.

132 (Endorsed:) No. 2529. Robert W. Morrison, *et al.*, Appellants, *vs.* Bates B. Burnette, Curator, &c., *et al.* Appeal Bond of Laurel Oil and Gas Company. Filed Sep. 5, 1907, John D. Jordan, Clerk.

(*Notice to Co-appellees by Laurel Oil and Gas Company of Appeal to the Supreme Court of the United States.*)

And on the fifth day of September, A. D. 1907, a notice to the co-appellees by the Laurel Oil and Gas Company of the appeal to the Supreme Court of the United States was filed in said cause, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Eighth Circuit.

No. 2529.

ROBERT W. MORRISON ET AL., Appellants,
vs.
BATES B. BURNETTE, Curator of the Estates of EDITH and EDNA DURANT, Minors, *et al.*, Appellees.

Notice to Co-defendants of Appeal by Laurel Oil and Gas Company, and Consent Thereto.

To Monday Durant, guardian, and Bates B. Burnette, Curator of Edith and Edna Durant, minors, and Galbreath Oil and Gas Mining Company, a corporation:

You and each of you are hereby notified as the co-defendants and co-appellees in the Court below and in this Court that the undersigned, Laurel Oil and Gas Company, has this day appealed from the judgment and decree of the United States Circuit Court of Appeals for the Eighth Circuit in the above entitled cause which was rendered on the 10th day of July, 1907, to the Supreme Court of the United States at Washington, District of Columbia, for the reasons specified in the assignment of errors filed therewith in said cause by Laurel Oil and Gas Company. You are notified to appear, and join with Laurel Oil and Gas Company in said appeal, or, if you refuse to join in said appeal, that you make due appearance and formally enter your refusal so to do.

A joint decree was rendered in said cause in the United States Circuit Court of Appeals for the Eighth Circuit on the 10th day of July, 1907, against Laurel Oil and Gas Company and yourselves, and Laurel Oil and Gas Company desires to prosecute a separate appeal from the said joint judgment and decree to the Supreme Court of the United States from said Circuit Court of Appeals, and has this day filed its petition on appeal for an order of appeal, citation, bond in appeal, and assignment of errors with the end in view of appealing said cause to the Supreme Court of the United States at Washington, District of Columbia.

Dated this 29th day of August, 1907.

WILLIAM T. HUTCHINGS,
GEORGE A. MURPHEY, AND
WILLIAM P. Z. GERMAN,
Solicitors for Laurel Oil and Gas Company.

The above named, Monday Durant, guardian and Bates B. Burnette, Curator, of Edna and Edith Durant, minors, and Galbreath Oil and Gas Mining Company, joint defendants and appellees with Laurel Oil and Gas Company in the above entitled cause, do hereby acknowledge receipt of service by copy of the above entitled notice of appeal, and hereby waive the issuance of summons and severance and all objections to said appeal by Laurel Oil and Gas Company,

separately, from said joint decree in said cause, and hereby consent that said appeal may be separately prosecuted from said joint decree in said cause, and hereby enter our appearance thereto and refuse to join therein for the reasons that the interests of the said other co-appellees have been fully settled, compromised, and adjusted in said cause.

Dated this 29th day of August, 1907.

PRESTON C. WEST,
P. L. SOPER,
J. H. HUCKLEBERRY, &
THOS. H. OWEN,

134 *Solicitors for Monday Durant, Guardian, and Bates B. Burnette, Curator of — Edna and Edith Durant, Minors, and Galbreath Oil and Gas Mining Company.*

(Endorsed:) No. 2529. Robert W. Morrison, *et al.*, Appellants, *vs.* Bates B. Burnette, Curator &c., *et al.* Notice to Co-Appellees by Laurel Oil and Gas Co., of appeal, etc. Filed Sep. 5, 1907, John D. Jordan, Clerk.

(*Order Allowing Appeal of Laurel Oil and Gas Company to Supreme Court of the United States.*)

And on the fifth day of September, A. D. 1907, an order allowing the appeal of the Laurel Oil and Gas Company to the Supreme Court of the United States was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 2529.

ROBERT W. MORRISON ET AL., Appellants,

vs.

BATES B. BURNETTE, Curator of the Estates of EDITH and EDNA DURANT, Minors, *et al.*, Appellees.

On motion of George A. Murphey, Esquire, solicitor and counsel for appellee, Laurel Oil and Gas Company, it is ordered that an appeal to the Supreme Court of the United States at Washington, District of Columbia, from the final order and decree heretofore filed and entered herein, be and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings herein be forthwith transmitted to the said, the Supreme Court of the United States at Washington, District of Columbia.

It is further ordered that the bond of appellee be fixed at the sum

of Five Thousand Dollars, the same to act as a supersedeas bond and also for a bond for costs and damages on appeal.

135 Dated the 5th day of September, 1907.

WALTER H. SANBORN,
U. S. Circuit Judge, Eighth Circuit.

(Endorsed:) No. 2529. Robert W. Morrison, *et al.*, Appellants, *vs.* Bates B. Burnette, Curator, &c., *et al.* Order allowing appeal of Laurel Oil and Gas Company. Filed Sep. 5, 1907, John D. Jordan, Clerk.

(Citation.)

And on the sixteenth day of September, A. D. 1907, the citation on the appeal of the Laurel Oil and Gas Company was filed in said cause, the original of which, with the acknowledgment of service endorsed thereon, is hereto attached and herewith returned:

136 In the United States Circuit Court of Appeals for the Eighth Circuit.

No. 2529.

ROBERT W. MORRISON ET AL., Appellants,
vs.
BATES B. BURNETTE, Curator of the Estates of EDITH and EDNA DURANT, Minors, *et al.*, Appellees.

United States of America to Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene, and Frank M. Breene, Greeting:

You and each of you are hereby cited and admonished to be and appear in the Supreme Court of the United States in the City of Washington, District of Columbia, thirty days from and after the day this citation bears date pursuant to an appeal allowed and filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, wherein Laurel Oil and Gas Company and others are appellees and you are appellants, to show cause, if any there be, why the order, decree and judgment rendered against the said Laurel Oil and Gas Company, appellee, as in said order and decree mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Walter H. Sanborn, Presiding Judge of the United States Circuit Court of Appeals, Eighth Circuit, this 5th day of September, in the year of our Lord, nineteen hundred and seven.

WALTER H. SANBORN,
U. S. Circuit Judge, Eighth Circuit.

Service of the above citation is hereby acknowledged this 13th day of September, 1907.

WILLIAM J. BREENE,
W. B. HOMER, AND
JOHN J. SHEA,
Attorneys for Appellants, Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene, and Frank M. Breene.

[Endorsed:] No. 2529. Robert W. Morrison *et al.*, appellants, *vs.* Bates B. Burnette, curator, *et al.* Citation on appeal of Laurel Oil and Gas Company. Filed Sep. 16, 1907. John D. Jordan, clerk.

137 (*Clerk's Certificate.*)

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing one hundred — thirty seven pages contain full, true and complete copies of all pleadings, record entries and proceedings, including the opinion of said United States Circuit Court of Appeals, in a certain cause in said Court wherein Robert W. Morrison, *et al.*, were Appellants, and Bates B. Burnette, Curator of the Estates of Edith Durant and Edna Durant, Minors, *et al.*, were Appellees, No. 2529, May Term, 1907, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that the original citation, with the acknowledgment of service endorsed thereon, is hereto attached and herewith returned.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this twenty-seventh day of September, A. D. 1907.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals for the Eighth Circuit.

Endorsed on cover: File No. 20,896. U. S. circuit court appeals, 8th circuit. Term No. 493. Laurel Oil and Gas Company, appellant, *vs.* Robert W. Morrison, Charles W. S. Cobb, John E. McKinney *et al.* Filed October 31st, 1907. File No. 20,896.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19[illegible]

No. [illegible]

LAUREL OIL & GAS COMPANY,

Appellant,

vs.

ROBERT W. MORRISON, CHARLES W. [illegible], CODD, JOHN Z. MCKINNEY, ET AL.,

Appellees.

Appeal from the United States Circuit Court of Appeals for the [illegible] Circuit.

BRIEF ON BEHALF OF LAUREL OIL & GAS COMPANY, Appellant.

WILLIAM T. SCOTCHMER,
GEORGE A. MILLIKEN,
[illegible] G. GILLIAM,
Solicitors for Laurel Oil & Gas Company, Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

No. 493.

LAUREL OIL & GAS COMPANY, Appellant,

vs.

ROBERT W. MORRISON, CHARLES W. S. COBB, JOHN E. M'KINNEY, ET. AL., Appellees.

Appeal from the United States Circuit Court of Appeals, for the Eighth Circuit.

Brief on behalf of Laurel Oil & Gas Company, Appellant.

William T. Hutchings, George A. Murphey, William P. Z. German, Solicitors for Laurel Oil & Gas Company, Appellant.

STATEMENT OF THE CASE.

The following comprises a succinct statement of the facts in this case:

On June 11, 1906, the Court, at Sapulpa, read a lengthy written opinion, which is not of record, overruling certain excep-

tions to the Master's report which were filed by the Laurel Oil & Gas Company. Under the statute concerning the leasing of minor's lands the lease should not have been made until or after the 11th day of June, 1906, because the Guardian's petition required the authorization of the Court before he could legally enter into any leases, (see *Mansfield's Digest,* Sections 3509-3511). The Court, however, on the 11th day of June, 1906, sitting at Sapulpa, actually approved and signed the leases made by the Guardian of Edith and Edna Durant, on March 9, 1906, without any authority of Court previously had (see record, pages 52, 53 and 54) and it will be noted here that while these orders were signed by the Judge at Sapulpa, upon said date, the record shows that they were not filed in open Court until June 14, 1906. It may be considered, however, that the action of the Court on the said 11th day of June, 1906, in approving said leases, executed without authority, and not in conformity with the sections hereinbefore cited from *Mansfield's Digest,* cured the failure to comply with the statute, as under the law, the leases should not have been executed until after said order authorizing the guardian to lease, was made by the Court on June 11, 1906. As we shall show hereafter, however, there can be no valid contract capable of being enforced as a lease for mineral purposes unless made with the approval of the Secretary and, therefore, up to the time that the Secretary shall approve the same there is nothing but a *nudum pactum,* incapable of being enforced by either party, until the Secretary of the Interior shall approve it.

Before the ink was dry on these orders the Court had announced to numerous people that it would probably set the orders aside and reopen the bidding, but the Court desired to be advised as to whether an inadequate price had been received for the leases and whether a larger sum could be obtained if the orders which he had signed on the 11th of June, 1906, should be vacated, set aside and held for naught. The assertion by plaintiff in error that the Court confirmed these leases made without authority of law, with full knowledge that the minor Indians

were thereby being deprived of a just heritage and of their property, is not borne out by the record, for on June 13, 1906, the order approving these two leases now held by the Galbreath Oil & Gas Company to Robert W. Morrison and his associates was set aside for the reason that "a much better lease can be made and a much higher bonus obtained," (see record, page 56). See also general order entered June 12, 1906; (Rec. page 55).

On the afternoon of June 12, 1906, the Laurel Oil & Gas Company filed a motion for leave to bid upon the allotment of Edith Durant, a minor, and filed with its motion a certified check as a cash bonus for $8,000.00 (see record, page 55).

The Court then on Tuesday announced that it would be compelled to set aside all orders heretofore made and reopen the bidding and would do so providing the Court was guaranteed an increase of not less than 20 per cent, upon each and every bid as a minimum. The Court was assured in open Court that this would be furnished and bonus be placed in the hands of the Master in the form of a certified check. The attorneys for Robert W. Morrison and Francis M. Selby protested and desired time to go to the Court of Appeals for Indian Territory and secure a supersedeas, or order of prohibition. The Court, on the evening of June 12, 1906, before the attorney for plaintiff in error, went to South McAlester, where the Court of Appeals was in session, made the order which is shown by the record on pages 55 and 56 and on the morning of June 13, 1906, formally entered the order of record, setting aside the order approving the oil and gas mining leases given upon the lands of these minors by their guardian, to Robert W. Morrison and his associates, appellees herein, on June 11th.

Upon the presentation of the various matters in the Court of Appeals of Indian Territory on June 13, 1906, by the attorney for the appellees, their application for writ of prohibition was denied. The action of the trial Court in reopening every single

bid under the guaranty furnished the Court is most highly commendable. The order of the Court on the evening of June 12, 1906, applied to each and every one of the minor leases then pending before the Court without specifically mentioning any, but excepting two which were to be sold at 9 A. M., and th reason of the postponement was solely because of the statement of counsel for appellees, that they desired to procure an order from the Court of Appeals of Indian Territory, to prevent said offering for sale.

Under the order of the Court the Master offered, at public vendue, the Edith and Edna Durant tracts, amongst others, and they were bid in by the Galbreath Oil & Gas Company. Eighty acres of the Edith Durant allotment sold for $16,800, and the remaining eighty acres was bid in by the Laurel Oil & Gas Company for $2,000.00. The Edna Durant tract was bid in by the Galbreath Oil & Gas Company for the sum of $2,460. This offering for sale and the bidding in of said tracts was done on the same day, June 13, 1906, after the specific order was made, filed and entered in the specific cases of Edith and Edna Durant, setting aside the order of June 11, 1906, authorizing the guardian to enter into the mining lease with said Robert W. Morrison, et al, and confirming the same.

The action of the Court in setting aside and vacating the order of June 11, 1906, is what appellees sought to have set aside in the Circuit Court of Appeals. As we propose to show, we think they have failed to proceed in such a way as to authorize any appellate court to look into the matter at all.

Thereafter, on the 14th day of June, 1906, in accordance with the provisions of *Mansfield's Digest,* the leases were duly executed by Monday Durant, guardian of Edith Durant and Edna Durant, to Laurel Oil & Gas Company. The lease of Edith Durant of eighty acres to Galbreath Oil & Gas Company was confirmed on the 14th day of June, 1906, and the lease of

Edna Durant was confirmed on the 24th day of June, 1906, as appears from the record. The lease of Edith Durant to Galbreath Oil & Gas Company is no longer in this case as a settlement has been effected between them.

On appeal to the United States Court of Appeals for Indian Territory, the order and judgment of the Court of the Western Judicial District was in all things affirmed. By appeal from that Court to the United States Circuit Court of Appeals for the Eighth Circuit, the latter Court, on July 10, 1907, reversed the judgments of the lower Courts in the decrees entered therein confirming and approving the lease to this appellant, and the cause was remanded to the trial Court with directions to affirm and enforce its order and decree, which confirmed the sale and approved the lease to these appellees.

ARGUMENT.

I.

The procedure taken by appellees does not conform to the law in force in the Indian Territory in cases of this character.

Section II of the Act of March 1, 1905, provided for the creation of a Court of Appeals in the Indian Territory which should have such general superintending control over the courts thereof as is conferred upon the Supreme Court of Arkansas over the courts of such state, as is provided in Chapter 40 of *Mansfield's Digest* of the laws of Arkansas, and granting appeals and writs of error from said courts in the same manner as appeals and writs of error were taken in the State of Arkansas.

No appeals were allowed from the probate courts of the State of Arkansas to the supreme court of the state, and appeals were only allowed to the circuit court in the manner provided by law.

This law was in force when the Act of Congress hereinbefore quoted was approved by the President on March 3, 1905, and which relates solely to appeals and writs of error from the final judgments of the United States Courts in the Indian Territory which are to be taken in the same manner and under the same procedure as appeals or writs of error are taken from the Circuit Court of the United States to the Circuit Court of Appeals for the Eighth District.

Appeals and writs of error are taken from the probate courts to the circuit courts, and therefore, under the statutes in force in the Indian Territory, the method of appeal or suing out a writ of error from the probate court to the circuit court is prescribed. Section 1385 and 1386 of *Mansfield's Digest* prescribed this form of procedure and the form of affidavit required of the appellant.

It is true that Congress did not specifically adopt these sections, but it conferred upon the United States Courts in the Indian Territory the jurisdiction of probate courts, giving them authority to appoint administrators and jurisdiction over executors, guardians, curators, etc., and further provided in so many words that the practice, pleadings and forms of proceedings in civil cases shall conform as near as may be to the practice, pleadings and forms in like cases in courts of like jurisdiction in the State of Arkansas, any rule of court to the contrary notwithstanding.

This court has held that, although the statute relating to ejectment was not specifically put in force, yet by analogy, as other matters relating thereto were put in force, it necessarily carried with it all the provisions of said statute.

Wilson vs. Owens, 1 Ind. Ter. 163.

As the probate courts of Arkansas are subsidiary and inferior courts to the circuit courts, Section 12 of the Act of Congress approved March 3, 1905, hereinbefore cited, does not ef-

fect said procedure, as it was only from the final judgments of the United States Courts which, under the laws of Arkansas, did the work of circuit courts, that appeals or writs of error were allowed.

In all our probate business in the Indian Territory, our judges sitting in probate are just as separate and distinct from their sittings as a circuit court as they would be if sitting as an examining magistrate in a criminal case. A separate docket is kept, and the proceedings are entirely distinct.

Our code provides that, while the form of action is abolished, yet our judges sit both in equity and in law, maintaining separate dockets in each, and transferring cases from one docket to the other as the exigencies of the occasion may require.

It might be urged that it would be an idle form to file the required affidavit and take the preliminary appeal from the probate side of our court to the circuit side of our court, inasmuch as the same judge presides over each court, yet history records that such appeals are not always ineffectual. The same reasons might just as well be urged against motions for new trial, but one would hardly contend that counsel could dispense with a motion for new trial because he considers it useless to thrash over the same old straw with the very judge who tried the case.

There are doubtless many people who could get the consent of their conscience to appeal and have their counsel make for them an assignment of errors, for the purpose of delay only, who would not make the affidavit required by section 1386 of *Mansfield's Digest.*

II.

Under the law, congress has vested in the Secretary of the Interior the ultimate discretion in the granting of all mineral

leases in the Indian Territory, and there is no contract which is capable of being enforced by the court so that the same may be considered a final order and reviewable by this court until it has been given life by the approval of the Secretary of the Interior.

In other words, if the court has acted upon and confirmed the proposed lease (for it is not a lease in any legal sense of the term without the approval of the Secretary), it is nothing but a proposal to the Honorable Secretary of the Interior, which he may approve or disapprove without the intervention or subject to the control of any court whatsoever.

Counsel who are not thoroughly familiar with the ~~analogous~~ anomalous conditions existing in the Indian Territory frequently lose sight of the fact that rules of law applicable to other jurisdictions, where courts possess the power to enforce their decrees, are not applicable in various matters in the Indian Territory, where the interests of the Indian is concerned, for it has ever been the policy of Congress in dealing with Indians in the Indian Territory, to vest the responsibility for their welfare with the Honorable Secretary of the Interior, who is by law the proper guardian of their property rights.

The sole authority of the court to act in cases of the character now before this court rests entirely upon the rules promulgated by the Secretary of the Interior. The actions of our courts thereunder have not that finality which make them reviewable by an appellate court. No vested right is conferred upon any person by reason of the action of the court in regard to any lease. What the court does do, and may do, is only a means of aiding the Honorable Secretary of the Interior, in whose wise discretion is committed the final arbitrament and adjudication of these matters. Until his sanction and approval has been obtained, there is no valid lease, or any vested right, or in fact any enforceable right whatever.

This was admitted by Mr. Shea, one of counsel for appellees

in response to a direct inquiry from the Honorable Hosea Townsend, Judge of the Indian Territory Court of Appeals, in his presentation of the matter for a writ of prohibition to prevent bidding for the very leases in question at three o'clock p. m. on the 13th day of July, 1906. The order of court was not final, the lessee could not go upon the land and drill any well or exercise any right whatsoever under said order. The court was without authority to enforce its order, and we know of no rule of law which construes any order of court final where the same is not capable of enforcement by the authority of said court acting by means of any process whatsoever. The court was without authority to put the lessee in possession, and Mr. Shea admitted that this was so. We are of the opinion that this admission settled the question sought to be brought up in these proceedings.

At the utmost, there is nothing but an inchoate right, capable, it is true, of being given validity, but only at the discretion of the Honorable Secretary of the Interior. To say the least, parties presenting proposed leases for approval present simply a plea and a petition without the semblance of a legal enforcement right.

If the contention of counsel for appellees is true, then the Secretary of the Interior would be compelled to approve every pretended lease to which the court gave its official sanction.

Section 17 of the supplemental agreement between the United States and the Creek Nation of Indians, approved June 30, 1902, provides:

> "Creek citizens may rent their allotments for strictly non-mineral purposes, * * * * and leases for mineral purposes may also be made with the approval of the Secretary of the Interior, AND NOT OTHERWISE."

The Department of the Interior has wisely held that there is

no contract until the proposed lease receives the stamp of the approval of the Secretary, which he may reject without being accountable to any court or to any human being.

For the purpose of carrying the foregoing section into effect, the Honorable Secretary of the Interior prescribed certain rules and regulations, without compliance with which no person or corporation could have approved an oil lease upon an Indian's land in the Creek Nation.

Section 15 of said rules and regulations provides as follows:

> "In cases of transfers, leases, and sales to which minors are parties grantor, the transfer, lease, or sale must be made by a guardian, and the lease, deed, or instrument of conveyance must be accompanied by certified copies of the orders of the proper court appointing the guardian and authorizing him to make such transfer, lease, or sale, *and it must be fully understood that the Department reserves the right to use any means at its disposal for the purpose of ascertaining whether the consideration given is the fair value of the land, and whether the proposed lease or sale is for the best interests of the Indian.*"

This rule, as originally promulgated and as quoted herein, did not require any further orders of court, where minors were concerned, than a certified copy of the order of the court appointing the guardian and a certified copy of the order authorizing him to make the lease. The amended rules now in force require the confirmatory order.

The wisdom of this rule in providing for the proper protection of minor Indians is well exemplified in the present cases. Where the attention of the Secretary is called to the fact that the minor is being deprived of something of value, the interest of the minor is well protected under this rule, as the Secretary

has specifically reserved the right to inquire into the fact whether the consideration given is a fair value of the land and whether the proposed lease or sale is for the best interests of the Indian.

In matters involving large interests as those coming from the Indian Territory to the attention of the Honorable Secretary for his approval, he will necessarily look at the status of affairs at the time the lease is presented to him for approval, and it would be most inequitable and unjust to grant an individual non-citizen a large increase in value earned without any expenditure or effort upon his part, to the detriment of the Indian minor.

Frequently months pass before a lease finally reaches the Secretary of the Interior and the value of the lease is *greatly* enhanced. It seems to us preposterous to say that the Secretary must give that increased valuation to those who do not own the land and have contributed nothing to its advancement but are to profit solely by reason of discoveries in the vicinity of said land which had greatly increased its value at the time the Secretary is to pass upon it.

Under the plenary powers vested in the Secretary by the Treaty or Act of Congress and the unqualified reservation in the rules and regulations which the Secretary has promulgated, it seems idle for us to talk about the rulings and judgments of the probate court having any such finality as entitle them to be reviewed in this appellate court, for, as we have heretofore said, a final order, to be reviewable, must be one that is effective, and it certainly cannot be said that, upon the entry of the order by the court confirming the lease, there is any valid contract, because under the law the entire matter awaits the action of the Secretary of the Interior to be approved or disapproved at his discretion.

Every proposed mineral lease must be brought ultimately

before the Secretary. Every matter that is attempted to be raised here could be brought to his attention, and no matter what this court might see fit to do, we must come in the last analysis to the arbitrament of the Honorable Secretary. It is not to be presumed that one in his exalted office will act illegally or that he will not properly protect the interests of every one concerned.

In our opinion, the order of the court is not final, and therefore there can be no review of the same by an Appellate Court.

III.

Is the setting aside of an order signed June 11, 1906, on June 12th and 13th, 1906, illegal and without authority of law?

If the appellees had a proper and perfect record this court ought not and would not reverse the trial court because they never had a final judgment, the trial court having control over all its judgments and decrees until the end of the term and had set aside the confirmatory order under which appellees are claiming, not only before the term had lapsed but almost as soon as the order they are contending for was entered.

We will take up the first argument of appellees on their own ground and endeavor to show that the general statements found in the books upon which they are relying have no application to the case at bar. That a guardian's sale under order of court becomes final upon confirmation is true enough if the order of confirmation remains in full force and vigor until the term at which it is made has lapsed—this, however, is only true when such order is the final step in the proceeding and nothing further remains to be done or, as in the case of *Files vs. Brown*, which will be noticed later, the transfer has been completely executed. There is a vast difference between filing a bill to reopen a sale after the lapse of the term or making a collateral attack upon the judgment, and the court which rendered it setting aside and vacating its order before the end of the term. We have examin-

ed every case cited by appellees which is accessible in the libraries at Muskogee and find that in many of them the application was made after the lapse of the term and that where the application was made to the same court, at the same term, the sale was, in some instances, set aside and in others the trial court refused to disturb it and in both classes they have been upheld by the appellate tribunal, and through all of them runs the distinctly admitted proposition that it is a matter almost wholly in the discretion of the trial court.

In the case of *Blanks vs. Farmers L. & T. Co.*, 122 Fed. 849, one is impressed with the wonderful similarity between the course of procedure there and in the case at bar. The court reopened the bidding for a better price, obtained it, and was upheld by the Circuit Court of Appeals for the Fifth Circuit.

The case of *Fidelity Trust, etc., Co. vs. Mobile St. Ry. Co.*, 54 Fed. 26, is the opinion of the trial, not the appellate court. The court, under the circumstances, simply declined to reopen the bidding.

The above is also true of the case of *The Ruby*, 38 Fed. 622.

In the case of *Smith vs. Black*, 115 U. S. 308, Law Ed. 29-398, the sale sought to be disturbed had been made under a deed of trust, out of court. It got into court by a bill being filed, attacking the sale, which bill was sustained by the trial court, but was reversed, and very properly so, by the Supreme Court, and the bill dismissed. We do not understand upon what theory it is cited as an authority in this proceeding.

In *Graffam vs. Burgess*, 117 U. S. 180; Law Ed. 29-838; the plaintiff sought, by bill in equity, to set aside sales made under execution upon judgments at law. Under the showing made the trial court granted relief and its action was affirmed by the Supreme Court.

The case of *Pewabic Mining Co. vs. Mason*, 145 U. S.

349; Law Ed. 36-732; grew out of certain litigation winding up the affairs of a mining corporation. A sale was made by a Master against the objections of plaintiffs in error, the lower court confirmed the sale. The lower court's action was upheld by the Supreme Court and Mr. Justice Brewer, who delivered the opinion of the Court, was careful to say in the very opening paragraph: "It may be stated generally that there is a measure of discretion in a court of equity, both as to the manner and conditions of such a sale, as well as to ordering or refusing a resale."

In *Fry vs. Street*, 44 Ark. 502, the lower court, no offer of any higher bid having been made, refused a resale. Its action was affirmed by the Supreme Court of Arkansas and in another case (which plaintiffs in error do not, however, cite), *Thomason vs. Craighead*, 32 Ark. 391, the same court upheld the action of the trial court in ordering a resale after the Master's report was in, saying in the course of its opinion: "It is the well settled doctrine, or at least such is the theory, that the Court is itself the vendor in sales made under its decree, and will confirm or reject the sale, as the law and justice of the case may require."

In *Trull vs. Rice*, 92 N. C. 572, the trial court refused to reopen the bidding on an advance offer of ten per cent and the Supreme Court of the State refused to interfere with his discretion and affirmed the case. They cite as the leading case in that State, *Attorney-General vs. Roanoke Nav. Co.*, 86 N. C. 408, in which case the Supreme Court of North Carolina said:

> "All the authorities agree that courts of equity have an absolute power over all sales had under their order—in confirming or setting them aside and reopening the biddings * * * * *"

> "As biddings are merely opened for the benefit of those who have an interest in the property, this court, in making its decision, cannot take into consideration the purposes for which the property is purchased, nor

whether the purchasers are residents or non-residents. As Judge Bennett remarked in his judgment, "It is a mere question of dollars and cents."

Upon examination of the case of *Files vs. Brown,* 124 Fed, 133; 59 C. C. A. 403, to which appellees seem to pin their whole faith here and hereafter, it will be found in the first place that the judgment of the Court had been fully executed by the payment of the money and the actual transfer and delivery of the security offered for sale, everything being complete, not like these leases which are required to go through the Department and have the Secretary's approval before they are worth the paper they are written on, and in the second place that what the appellate court actually decided was that the lower court was wrong in overruling the demurrer to the receiver's petition as it stood and with directions to sustain the same but allowed the receiver to amend. It is not analogous to the case at bar and affords no authority for the contentions of appellees.

Leaving out of view, for the time being, the fact that all action of the courts in regard to these minor leases is not and cannot be final, but only preliminary to the final action of the Secretary, which fact, in our judgment, differentiates our situation from every other one under the sun, and looking at the matter for the sake of argument, solely from the viewpoint of the appellees, we have found but one case on all fours with the case at bar. It is the case of *National Bank vs. Jarvis,* 28 W. Va. 805, wherein a sale was reported to the court and confirmed, but afterwards, and at the same ter[illegible]n advance of twenty per cent. being offered, the court set the confirmation aside and ordered a resale. Its action was upheld on appeal and in fact as we view the matter no other decision could have been rendered, for unless courts have power during the term to set aside or modify their judgments, orders and decrees, then we will have to acknowledge that from the time of entering upon the study of law our instruction has all been wrong.

In this case (*Bank vs. Jarvis et al.,* 28 West Virginia, 805)

the National Bank of Kingwood, in October, 1882, filed a bill on behalf of itself and all other creditors of Granville E. Jarvis in the Circuit Court of Taylor county against said Jarvis et al, to subject the real estate of Jarvis to the payment of the judgment of plaintiff, and his other judgment creditors. The case was referred to a Commissioner, who reported the lands owned by Jarvis, and the debts operating as a lien thereon. The cause was soon after removed to the Circuit Court of Marion county where all subsequent proceedings were had therein. By a decree entered December 18, 1883, Frank Woods was appointed Commissioner to sell certain tracts of Jarvis' land, and at the July term, 1884, filed his report in which he showed that among other sales, he did, on March 20th, 1884, sell to Thomas E. Davis three tracts or parcels of land lying in Ritchie County, viz: (1) An undivided three-fourths of one hundred and seventy-one acres on Spruce Creek, for $614.00; (2) An undivided one-fourth of one thousand acres on the north fork of Hughes River, for $2,025.00; (3) one hundred eighty-four acres on McFarland's run, for $736.00. For each of which tracts, Davis had made cash payment, and given bond for the other payments, and in all respects complied with the terms of sale. *This report was by a decree entered July 7th, 1884, confirmed without exception.*

Eighty days afterwards, on July 15th, 1884, by leave of court, James B. Newlon filed a petition setting up that he was a judgment creditor of Jarvis to the amount of $742.47, and that his judgment had not been reported or provided for in the case, but was a lien upon all the Jarvis lands, and prayed that he might be made a party and his judgment provided for the same as if he had been originally a party. He, at the same time, filed an affidavit stating that the undivided one-fourth of the one thousand acres of land (which har been sold to Davis for $2,025.00) was sold for a very inadequate price; that the land was worth $3,000.00 and that if a resale was ordered he would make it bring $2,500.00 and filed his bond with surety binding himself to make said lands bring $2,500.00 on a resale. He then moved

tl·e court to set aside the sale and grant leave to except to said sale.

Thereupon on said 15th day of July, 1884, eight days after the court had made and entered its original decree confirming the sale to Davis, the court made a new decree setting aside so much of the decree of July 7th, 1884, as confirmed the sale of one-fourth of one thousand acres of land to Davis, with leave to Newlon to except to the report of sale, and continued the consideration of the confirmation thereof to the future term.

Newlon then excepted to the report of sale on the ground that the sale to Davis of the one-fourth of the one thousand acres was at an inadequate price, and because it had been reported at a less price than was bid for it, and to different persons than the highest bidder, and the original defendant, Jarvis, also, on September 2nd, 1884, by leave of Court, filed exceptions to the report of sale as far as it related to the one thousand acre tract on the ground that the price was inadequate; that the sale was improperly advertised and it had not been really bid in by Davis; that its chief value consisted of timber land, and that it had not been advertised as timber land, and in support of these exceptions, Jarvis filed certain deeds and his affidavit.

On September 2nd, 1884, Newlon, by leave of Court, filed an up-set bid of $3,025.00, with security to make the same good and an affidavit that the land was worth that price.

On November 28th, 1884, Thomas E. Davis (who was the purchaser at the original sale which had first been confirmed and then the order of confirmaton set aside) made a motion to confirm the original sale, and by leave of court filed in support of his motion, the affidavits of himself, Frank Woods, (who was the special Commissioner who made the sale) and J. W. Mason.

By decree of December 17, 1884, the court, on consideration

of the affidavits, up-set bid and other matters before stated, overruled the motion of Davis to confirm the sale; and decreed, that the one-fourth of the one thousand acres be re-sold by Commissioner Woods for not less than $3,025.00, and if no greater price than that was offered, to sell the same to Newlon at that figure. From this decree and that of July 15th, 1884, Davis appealed, but his appeal was dismissed as having been improvidently awarded, and the cause was remanded to the lower court.

After the cause had been remanded, Davis, by leave of court, filed a cross-bill making Jarvis defendant therein.

This cross-bill simply alleges the facts and proceedings hereinbefore stated, and prays that the sale of the one-fourth of the one thousand acre tract to himself (Davis) be confirmed and the decree of December 17th, 1884, set aside. The bill was supported by depositions tending to prove the facts alleged. The defendant, Jarvis, demurred to this cross bill, and excepted to and moved to exclude said depositions upon the ground, among others, that they referred to matters *res adjudicata*.

The Commissioner reported a resale of the tract in question under the direction of the court's decree of December 17th, 1884, to J. B. Newlon for his up-set bid for $3,025.00; that the cash payment had been made and bond given for the deferred payment, and the court, by its decree of March 16th, 1886, dismissed Davis' cross-bill, sustained the exceptions to and excluded the depositions filed in support of said cross-bill; confirmed the sale to Newlon and ordered deed made to him upon payment of all the purchase money. From this and the other decrees Davis appealed, assigning various grounds of errors, as follows:

> First:—The court, by its decree of July 15, 1884, erroneously set aside that portion of the decree of July 7, which had confirmed the sale of the fourth part of the tract of 1,000 acres, called the "Blue land."

Second:—It was error to set aside the confirmation of the sale of said "Blue land" without also setting it aside as to the other two tracts purchased by Davis.

Third:—It was error to permit either Jarvis or Newlon to except to the report of the sale of the said "Blue land."

Fourth:—It was error to dismiss the cross-bill and suppress the depositions filed in support thereof; and

Fifth:—It was error to confine the sale of the "Blue land" to Newlon.

"The first three of these assignments may be conveniently considered together. The record shows that it was on the petition, affidavit and up-set bid of Newlon, that the order of July 15, 1884, setting aside so much of the decree of July 7, as confirmed the sale of the 'Blue land' was made. The order and decree were both made during the same term. The question then arises, was the court warranted by either the law or the facts appearing to it that time, in making said order of July 15th? As a matter of law, it seems, that in admiralty cases, where it appears, after a decree has been entered, and before the end of the term, and there is error, the court has power to correct the decree, but this power is not absolute. 4 *Min. Inst.* pt. 11 (1285), 1435. But in other chancery cases, the rule in this country seems to be, that all decrees are in *fieri* and in the breast of the court and subject to its absolute control, until after the end of the term; that is, that it does not properly become a decree until the term ends (4 *Min. Inst.* pt. 11, (1262), 1390; *Laidley vs. Merrifield*, 7 Leigh, 353. *Hodges vs. Davis*, 4 H. & M. 400; *Carper vs. Hawkins*, 9 W. Va. 291; *Green vs. Railroad Co.*, 11 W. V. 685). According to these authorities it is unquestionable, that the court has absolute control of all interlocutory decrees during the whole of the term, at which they are entered, and may, at its discretion, set them aside without notice and of its own accord."

"But conceding this was not an interlocutory decree and that the action of the court setting it aside is subject to review by this court, I am clearly of opinion that the action of the court, according to the facts and circumstances then appearing, was right and ought not to be disturbed by this court. The alleged private contract between Jarvis and Davis in regard to the sale did not then appear. It did appear, however, that the land had been sold at an inadequate price. This was shown by best possible evidence and in the most conclusive manner by the up-set bid for an advance price of more than twenty per cent. This was of itself sufficient to set aside the confirmation and ordered a resale.

(*Kable vs. Mitchell*, 9. W. Va., 493)."

The remainder of the case is devoted to the discussion of matters not pertinent to the case at bar.

The law as announced by the Supreme Court of the United States, and by every other known authority, is that a court has complete control over its judgments, decrees and orders until the lapse of the term. We quote the language of Mr. Justice Miller in *Bronson vs. Schulten*: "In this country all courts have terms and vacations. The time of commencement of every term, if there be half a dozen a year, is fixed by statute, and the end of it by final adjournment of the court for that term. This is the case with regard to all the courts of the United States, and if there be exceptions in the state courts, they are unimportant. It is a general rule of the law that all judgments, decrees or other orders of the courts, however conclusive in their character, are under the control of the court which pronounced them during the term at which they are rendered or entered of record, and may then be set aside, vacated, modified or annullel by that court."

Bronson vs. Schulten, 104 U. S. 410.
Henderson vs. Carbondale C. & C. Co., 140 U. S. 25.
Bassett vs. U. S., 76 U. S. 38.
Underwood vs. Sledge, 27 Ark. 295.

The case of *Henderson vs. Carbondale, etc., supra,* involved certain coal leases taken by the present Secretary of the Interior. The Court, on September 15, had forfeited certain leases of other lessors, but on September 25th, and at the same term, set these forfeitures aside. Between these dates Mr. Hitchcock took his leases. The Supreme Court held that "where a judgment or decree is set aside at the term at which it is rendered, it is as though it had never been," and that Mr. Hitchcock took leases "knowing the court had full power during the term to vacate its own decree, he took these leases subject to the possibility of such vacation of the decree," and adjudged that he acquired no rights notwithstanding at the time of making his leases the decree forfeiting those of prior holders had not been vacated.

The case of *Underwood vs. Sledge, supra,* is an especially well considered case, and the reasoning of Mr. Justice Gregg so completely demolishes the "vested rights" theory of appellees' counsel that we do not think we could add anything thereto.

For some reasons appellees' counsel seem to conceive that there was something magical and sacred about the order of the court of June 11th, 1906, and, that no matter how clearly the judge, before whom these matters were depending (and whose probity is above suspicion), was convinced that his first decree was wrong and would work irretrievable injury to the Indian children whom it was his sworn duty to protect, he could not interfere with the plans of the oil operators, who are appellees in this case. He not only had the right and authority to do so, but had he done otherwise he would have violated the law, his official duty and his own conscience.

We have already pointed out the plenary power vested in the Secretary of the Interior and the explicit and careful reservation made by him in rules concerning the final disposition of all oil and gas leases upon the lands of minor allottees of the Creek Nation. By reference to the treaty provision cited and the regu-

lations of the Secretary, it is manifest that no action of the courts can be final in these matters. It must, before anybody's claim can ripen into an enforcible right, come before him and receive his approval. Should this court undertake to undo what Judge Shulzbacher has done the Secretary could still refuse to approve the lease which appellees are claiming and we submit that it would be his duty to do so. He has reserved specially and explicitly the right to find out "whether the consideration is the fair value of the land and whether the proposed lease or sale is for the best interests of the Indian." Could he, without the most flagrant violation of his trust, accept for these lands five thousand one hundred and thirty dollars when he knows that upwards of twenty-one thousand dollars are in hand ready to be turned over to these wards upon the approval of the appellants' leases? Certainly no court's orders or decrees can be final when they depend absolutely on some other person or tribunal to act before any rights whatever can be acquired under them.

It cannot be doubted that the law is well settled that the lower Court had full jurisdiction over these judgments during the term at which they were entered. This jurisdiction possessed by the Court is not created by statute, but is inherent in the Court. This has been so repeatedly settled by text writers and courts of last resort that it can no longer be considered a debatable question.

> "The power to vacate or open a judgment, or to set it aside, is a common law power possessed by the Court as a part of its necessary machinery for the administration of justice, and hence might be exercised without the grant of special statutory authority."
>
> *Black on Judgments*, Vol. I, Section 297.

Again, in the same section:

> "The power to vacate judgments is said to be in-

herent to all courts of record, and to be usually exercised under restraints imposed by their own rules."
Also Sec. 305 of same author:

"It is universally held that judgments are under the plenary control of the court which pronounced them during the entire term they are rendered or entered of record, and they may during said term, be set aside, vacated, modified, or annulled for cause shown. It is commonly said that judgments and decrees remain in the breast of the Court during the term of their rendition, and, for the purpose of modifying or vacating them, the whole term may be considered as one day. This power may be exercised during the term *on the Court's own proper motion* as well as on application by a party, when there is a manifest error or inadvertence to be corrected, and even, in proper cases, without notice to the parties. It is a power inherent in all courts of general jurisdiction, and is not dependent upon, or derived from, statutes."

Black on Judgments, Vo. 1, Section 305.
Jordan vs. Tarver, 17 S. E. Rep. 351.
Bradley vs. Slater, 78 N. W. Rep. 1069.

In the cast last cited, the Court, in the body of the opinion says:

"One may ask: as a matter of judicial grace what he cannot demand as a legal right. While Slater had by his laches forfeited his statutory right to move for a new trial, it was yet entirely proper for him to request a vacation of the judgment, and the court had undoubted right, in the exercise of his discretion and in the furtherance of justice to grant such a request. The form of the application was of no consequence. It was competent for the court to grant it, regardless of the form in which it was made. . . . . The presumption is that the court acted within the limits of its authority, and dealt with the application as an appeal to his inherent jurisdiction. It seems to us entirely clear that the district court, being possessed of ample authority to

vacate the judgment, its order in the premises was regular and valid, although made in response to an application in the form of an ordinary motion for a new trial."

Upon the proposition of jurisdiction, we submit that there is no ground for debate. The court below had jurisdiction *upon its own motion,* without any formal application, to set aside any judgment entered during the pending term, and this disposes of the first proposition involved in this appeal.

The second proposition is, did the court commit an abuse of discretion in setting aside the confirmation of the leases and re-offering the lands for leasing to other parties at public auction?

In considering this question, the court must also consider that the order entered by the judge confirming the sale hardly rose to the dignity of the ordinary judgment or decree of the court in usual cases. It was, it is true, in a sense, the judgment of a court, but it was conditioned in the end upon the approval of the Secretary of the Interior of the leases involved. It did not settle the rights of the parties or establish or confirm a contract between them. After the court had approved and confirmed the leases, they still existed only as propositions to lease, and could not become absolute contracts, so that any vested rights could be involved, until the Secretary of the Interior had given his approval.

Appellees, therefore, were not in a position to complain that any vested rights had been affected by the court's setting aside its order and judgment of approval, and opening up the leases for other bids. They lost no vested interest or right because they possessed none, but could not possess any until they had an enforcible contract. That contract was not complete without the approval of the Secretary of the Interior.

There were two disabilities inherent in the lessors; the one

was the disability of infancy as the ward of Monday Durant, the legal guardian, and the other disability of being an Indian ward of the government, a disability existing among adult Indians as well as those of tender years. The court had intervened to remove one disability, that of infancy, by his approval and confirmation of the leases. But the government had not intervened to remove the disability inherent alike in all Indians to make these mineral leases. The order of the court was impotent to reach that disability, and the power of the Court was not sufficient, nor had it jurisdiction to do so. That power, under the law, vested solely in the Secretary of the Interior. There existed no vested estate in the appellees because they had no right of present enjoyment. A vested right or estate is defined by Kent as follows:

> "An estate is vested when there is an immediate right of present enjoyment, or a present fixed right of future enjoyment. It gives a legal or equitable seisin."
>
> 4 *Kent Commentaries,* Section 202.
>
> "In the widest sense, vested rights are rights which are complete and consummated, so that nothing remains to be done to fix the right of the citizen to enjoy them."
>
> *Moore vs. State,* 43 N. J. Law, 243.
> *Anderson's Law Dictionary,* 1088.

It will be seen, under these definitions of a vested estate or right, that the appellees possessed no such right until their estate in the land was completed by the approval of the Secretary of the Interior. So long as there was no vested right disturbed by the action of the court, there is nothing to appeal from, unless it could be shown that the court abused its discretion in the exercise of its undoubted jurisdiction over his order confirming the

leases during the term time, and that takes us to the second proposition involved in this controversy.

In the first place, if it were an ordinary judgment in which the plaintiff had an absolute right, that was affected by the order setting it aside, still the court would have almost unlimited discretion in doing so; yet, where as in the case at bar, it involved the rights of infants over whom and over whose estate the court was guardian, it will be difficult to find any abuse of discretion in the action of the court.

The court had a double discretion and a double duty: first, it had a discretion to set aside any judgment entered during the term upon its own motion where absolute rights of parties were involved. It had an additional discretion where the rights of infants were involved. If this court should affirm this case, it would be put in the anomalous position of saying that the trial court abused its discretion in setting aside its approval of the leases to appellees when it had an absolute guarantee of twenty per cent. higher bonus and the result of which action brought the Enda Durant estate an increase of $820.00 and the Edith Durant estate and increase of $15,310.00.

This Honorable Court will certainly hesitate in reversing the trial court for abuse of discretion in exercising its undoubted jurisdiction in setting aside the bids of appellees, when the result of that reversal would deprive these infants of $16,130.00 in their joint estates. The lower court, instead of being criticised, should be highly commended and praised for its action in the interest of these infant children. Even in the appointment of guardians, the court is vested with a larger discretion and in conserving the interest of the wards through the later stages of the handling of their estates, they have almost unlimited and absolute discretion.

> "In the appointment of guardians, the Probate Courts are vested with a sound legal discretion, and

their judgments will not be overruled in such cases without a manifest abuse of such discretion is apparent."

Nelson vs. Green, 22 Ark. 368.

It is conceded, and therefore needs no argument, that the court below, as a probate court, had full power to make such rules and regulations with reference to the manner in which these mineral leases of infants should be made by their guardians. Complaint is made that certain rules were made by Judge Sulzbacher governing the manner in which these leases should be executed and bids received for them. The right to make these rules implies the right to change them, and the fact that the court had a rule that the sale should be advertised in the newspaper, did not render it incumbent upon him, after the setting aside of his order of approval of appellees' leases, to have notice given of the sale. As shown by the master's report and by the orders of the court, it was announced in open court and made a matter of record, and appellees, through their attorneys, were protesting against it, and filing motions and objections and exceptions. They had full notice of the reoffer and of the time and place thereof. As a matter of fact, they were present at the bidding. The court had authority to make any order that seemed wise, to the end that the estates of these wards might be best conserved, and the results are very eloquent and convincing argument that he acted wisely. Was there abuse of discretion?

"The setting aside of defaults and permitting pleadings to be filed out of time is largely discretionary with the trial court, and its rulings thereon will not be disturbed unless there is a clear abuse of discretion."

Hopkins vs. Hopkins, 47 Kansas 103.

"While a motion to open a default is addressed largely to the discretion of the court, all doubt should be resolved in favor of the application; and, where the cir-

cumstances lead the court to hesitate as to the merits of the application, an order denying such a motion will be reversed on appeal."

Vermont Marble Company vs. Black, 38 Pac. 512. (Cal.)

"An order of a trial court, setting aside a judgment rendered therein by default will not be disturbed by the court of appeals unless it appears that there was an abuse of discretion."

Mayor vs. Smith, 34 N. E. Rep. 400 (N. Y.)

The Supreme Court of Arkansas has announced the same doctrine with reference to the discretion of the court that prevails elsewhere. In *Fleming vs. Johnson*, 26 Ark. 433, in the opinion of the Court, it says:

"The above decisions, we think, fully sustain our position that, under the statute in force at the time this sale was made, the court could order such an one as its discretion would dictate whether public or private. When, by constitutional or legislative authority, a court is left with discretionary power to act in certain cases, the lawful exercise of that discretion is a judicial act, which, even in a direct proceeding, cannot be controlled by a superior or appellate court, on appeal, unless it has been grossly abused. It is the general rule that the confirmation of a sale, made in the pursuance of an order of court cures all defects or irregularities, and its validity is put beyond question by that fact unless it is attacked directly. Then, again, it has been repeatedly declared by this court that probate courts are superior ones. If such be the case, all reasonable presumptions of law are in favor of the regularity of their proceedings, the record of which, beyond which this court can not look in this case, shows it had jurisdiction and furnishes satisfactory grounds upon which to presume that it was lawfully exercised."

The case just quoted arose over the confirmation of a sale

of a ward's land made by a guardian, and involved a greater estate than a leasehold estate.

Granse vs. Fringo, 49 N. W. Rep. 60 (Minn.)

> "A motion to vacate or set aside a judgment is addressed to the sound, legal discretion of the trial court on the particular facts of the case, and its action in the matter, whether of allowance or refusal, will not generally be disturbed by the appellate court, unless there has been a manifest abuse of discretion."

Bailey vs. Taaffe, 29 Cal. 422.
Black on Judgments, Vol. 1, Section 354.

It seems to us, in view of the large discretion reposed in the trial court, not only in setting aside judgments during the term at which they are rendered when in the interest of justice, but also the large powers vested in the lower court to act in the interest of the estate of these wards, that there was no abuse of discretion in the action complained of. Indeed, the court would have been guilty, in our judgment, of a great wrong to these infants whose interests were committed to his care, had he prevented their estates from receiving the additional bonus which they received by the last bids.

Appellees, in their brief, devoted much space to quotations from *Rorer on Judicial Sales.* The writer, in commenting on the duty of the court, in cases like the one at bar says:

> "Before confirmation an offer of ten per cent and costs of increase is sometimes deemed sufficient to cause an order of resale to be made."

Rorer on Judicial Sales, Section 587.
Again:

> "And so, in Virginia, the ruling is that the bid-

> dings will be opened in a judicial sale, and a resale ordered for a material advance, where the sale is at a sacrifice."
>
> *Rorer on Judicial Sales,* Section 588.

Commenting further on the duty of the court to protect the estate of the guardian, this writer also says:

> "It is in such cases the duty of the court, in the exercise of its high powers as guardian of all minors, to protect the interests of those whom equity makes the special objects of its care."
>
> *Rorer on Judicial Sales,* Section 584.

Before we close this brief, it may be a pertinent question as to whose interest the court is to protect. Is it the interest of the purchaser at the sale, or the interest of the ward that Judge Sulzbacher should conserve? It is true that it was a disappointment to the bidder not to be able to get these very valuable mineral lands under his bid, but was it, all things considered, any more important than that the wards' estates should be safeguarded by the court? Should the court shut its eyes to a guaranteed offer, not only on the leases involved in this litigation, but on many others before the court, of twenty per cent advance? Should this appellate court, acting as the guardian of these children, return to the subsequent bidders $16,130, added to the estates of these two wards, and thereby depreciate their estates to that extent, because these capitalists are somewhat aggrieved, and have suffered by the action of the court?

The appellees' counsel boldly asks this court to transfer $16,130 from the estate of these two wards to the pockets of their clients. A guardian giving a bond would be liable on his bond for any action that would result in so great a depreciation of his

ward's estate, and any court would certainly be culpable and open to the gravest criticism, that would stultify itself in this manner. Many quotations of authorities from *Rorer on Judicial Sales,* and some of our appellate courts have been made by counsel for appellees in their brief, but in no one of these cases has the lower court been criticised or reversed for opening up the bidding, and making a resale of the property where an increased bid has been received. It is true that it is the policy of the law to uphold sales that are regularly and fairly made. This is true as an abstract principle, but it is likewise true that where large benefits will accrue to the ward under guardianship, the courts frequently, in the exercise of their discretion, open up these bids to make it possible that these benefits may accrue to them; and in no instance in our investigation of the authorities has an appellate court criticised such action, or found reversible error in such conduct.

It might be possible, had the trial court refused to open up the bidding and decree a resale of the leases, that this court would have felt constrained, because of the large discretion reposed in the lower court, to have affirmed its decision on the theory and principle that it is the policy of the law to sustain judicial sales.

IV.

Eight assignments of error are relied on in this Court as errors committed by the Circuit Court of Appeals in reversing the lower Courts, but we shall occupy but little space with the first two, as they are matters of practice and will be decided by this Honorable Court as such. That Court held, first, that it had jurisdiction and so had the Court of Appeals of Indian Territory, to decide the merits of the case upon appeal without an assignment of errors being filed within the time allowed by law in that Court, and second, that an appeal could be taken directly from the

Probate Court of Indian Territory to the Court of Appeals for that Territory without first appealing the cause under Mansfield's Digest of the Laws of Arkansas to the United States Court. It would seem a dangerous precedent to establish that the Court of Appeals of Indian Territory had jurisdiction to determine the questions involved here where no assignment of error is filed, and the statute cited and the authorities quoted under sub-division I as to the proper appellate procedure from Probate Courts to the United States Courts of the Indian Territory sustain our view that the course pursued in appealing this cause directly from the Probate Court to the United States Court of Appeals of the Indian Territory was improper and could confer no jurisdiction on that Court. It having no jurisdiction, none was conferred by appeal from that Court to the Circuit Court of Appeals. This disposes of the first two assignments of error as far as we will discuss them in this brief.

V.

The third, fourth and fifth assignments of error filed in this Honorable Court, present, in our opinion, the questions that are vital to this case. First, that the Court erred in holding that the Act of Congress known as the "Curtis Act," of April 26, 1906, was retroactive and its provisions applicable to the guardian's sale held on the 5th day of March, 1906, *prior to its enactment.*

The Act of Congress which ratified the Supplemental Agreement between the Creek Nation of Indians and the United States, approved June 30, 1902, provided as follows:

> "Creek citizens may rent their allotments for strictly non-mineral purposes for a term not exceeding one year for grazing purposes only, and for a period not to exceed five years for agricultural purposes, but without any stipulation or obligation to renew the same. Such leases for a period longer than one year for graz-

ing purposes and for a period longer than five years for agricultural purposes and leases for mineral purposes may also be made with the approval of the Secretary of the Interior, and not otherwise.

32 Stat. 794, c. 1323, Sec. 17.

By the Act of March 3, 1905, in making provisions for the expenses of the Indian Department and for fulfilling the treaty stipulations with various Indian tribes, the Secretary of the Interior and the Attorney General were empowered to investigate and bring suit to cancel all leases of allotted lands which they have reason to believe have been obtained by fraud or in violation of the terms of the agreements with any of the Five Civilized Tribes. It expressly provides that

> "No lease made by any administrator, executor, guardian or curator, which has been investigated by and has received the approval of the United States Court having jurisdiction of the proceeding shall be subject to suit or proceeding by the Secretary of the Interior or Attorney General, and that no lease made by any administrator, executor guardian or curator shall be valid or enforcible without the approval of the Court having jurisdiction of the proceeding."

33 Stat. p. 1060, c. 1479.

On the 15th of April, 1905, the Secretary of the Interior adopted Regulation No. 15, which reads as follows:

> "In cases of transfers, leases and sales to which minors are parties grantor, the transfer, lease or sale must be made by a guardian, and the lease, deed, or instrument of conveyance, must be accompanied by certified copies of the orders of the proper Court appointing the guardian and authorizing him to make such transfer, lease or sale, and it must be fully understood that the Department reserves the right to use any means

> at its disposal for the purpose of ascertaining whether the consideration given is the fair value of the land, and whether the proposed lease or sale is for the best interests of the Indian."

Such were the laws and regulations as to the execution and approval of leases of minor Indians for mineral purposes in the Indian Territory when the lease in controversy was sold to the highest bidder on March 5, 1906. Under the law and regulations of the Interior Department, it required both the approval of the Secretary of the Interior and the approval of the United States Court, sitting in probate, before the lease became effective. These propositions are conceded by appellees and the Circuit Court of Appals so held after the recital of the law and these regulations in the opinion in this case. (Printed Record, p. 108).

On April 26, 1906, (Public Acts 1905-06 pp. 137, 135, 148), known as the Curtis Act, Congress enacted the following provision:

> "Section 20. That after the approval of this Act all leases and rental contracts, except leases and rental contracts for not exceeding one year for agricultural purposes for lands other than homestead, of full blood allottees of the Choctaw, Chickasaw, Cherokee, Creek and Seminole tribes, shall be in writing and subject to approval: Provided, that allotments of minors and incompetents may be rented or leased under order of the proper Court."

If it is held, which we think is very doubtful, that this latter Act repealed by implication the provision of the Supplemental Treaty of June 30, 1902, which provided that leases for mineral purposes could not be made without the approval of the Secretary of the Interior, then certainly the law could not apply to the lease in controversy, sale of which had been made on March 5, 1906, fifty-one days before the latter Act took effect. That

sale had been made under order of the proper Court and the statute is "that allotments of minors and incompetents may be rented or leased under order of the proper Court." At the time that sale was made, the Act of June 30, 1902, providing that leases for mineral purposes could not be made without the approval of the Secretary of the Interior, was in full force and effect. Although this lease was not confirmed until in June following by the United States Court of the Western Judicial District, that confirmation related back to the sale and must have been made with reference to the law in force at the time of that sale which required the approval of the Secretary of the Interior.

The Circuit Court of Appeals decided in this case that "leases of allotments of Indian minors approved by the trial Courts of the Indian Territory after April 26, 1906, were therefore not subject to approval or disapproval by the Secretary of the Interior. Those Courts had full and complete jurisdiction to sell the leases and to finally approve and confirm the sales and the leases. The lease to the appellants is in this category. It was approved and the sale of it was confirmed on June 11, 1906, and the order which approved it was therefore a final order." (Printed Record, p. 109).

We think this holding was clearly error, as it made the Act of April 26, 1906, retroactive in its application to a sale and leasing of land of an Indian minor of the Indian Territory made on the 5th of March, 1906. The confirmation of a judicial sale such as this one was, is a completion of the sale when there is no other tribunal to pass upon the matter. When confirmed, it relates back to the time of the sale. The title begins then, and what title the vendor, grantor or lessor had at that time is conveyed.

Sec. 106, *Rorer on Judicial Sales.*

"But confirmation, when made by the Court, though subsequent to the day of sale relates back to the date of

the sale, if the date of sale is apparent of record or in the deed, and carries title as from that date."

Sec. 109, *Rorer on Judicial Sales.*
Evans vs. Spurgin, 6 Gratt. 107.
Bennett vs. Fooks & Moffet, 1 Neb. 465.

The law in force at the date of the sale required the approval of the Secretary of the Interior, and that sale is the date that fixes the transference of title and that cannot be affected by subsequent legislation.

"A sale of real estate, after the code of 1873 took effect, under a judgment rendered before that time should conform to the law in force at the time the judgment was rendered."

Holland vs. Dickerson, 41 Iowa, 367.

The Indian minor was entitled and so is appellant to have the lease passed on and approved by the Secretary of the Interior and the minor's right to have this safeguard on this lease thrown around it to protect her interest was sacred to her and could not be divested by any legislation of Congress passed subsequent to the making of that lease. This right was taken away by the decision of the Circuit Court of Appeals. Our position is that, inasmuch as the Secretary of the Interior might refuse upon examination and investigation of this lease to approve it, that the action of the Court in disapproving the lease and setting aside the confirmation of it at the same term of Court it was entered, was not a final order, but was interlocutory. Hence, no appeal would lie therefrom.

VI.

The remaining fifth, sixth, seventh and eighth assignments of error present but one question, to-wit: The error of the Cir-

cuit Court of Appeals in decreeing that the trial Court had no jurisdiction or power to set aside this order of confirmation of the guardian's sale during the term at which such confirmation was made upon a showing and guaranty that a much larger bid could be realized at a second sale, without a showing of fraud, accident, mistake or some other cause. This branch of this case has been so thoroughly discussed in the former pages of this brief that additional authority or more extended argument would seem unnecessary. The trial Court was acting in the capacity of guardian for these minors as well as a judicial tribunal. It was its duty on its own motion to protect and safeguard their interests. Here was an additional offer of several thousand dollars in advance of the original bid. At the sale held two days after the confirmation was set aside and a re-sale ordered, the property brought $16,130.00 more than at the first sale. Was it not the plain and evident duty of the trial Court to allow the estates of these minors the benefit of this advance bid?

> "If it became apparent to the Court, from the face of the proceedings or otherwise, that the rights of minors have been illegally invaded or compromised, the Court will, on its own motion, set aside or decline to confirm the sale, and will order a re-sale of the property without waiting to be invoked so to do. It is in such case the duty of the Court, in the exercise of its high powers as guardian of all minors, to protect the interests of those whom equity makes the special objects of its care."

Section 584, *Rorer on Judicial Sales.*
Lefevre vs. Larraway, 22 Barb. 167.
Lansing vs. McPherson, 3 Johns. Ch. 424.
Billington vs. Forbes, 10 Paige 487.

> "The record being completely under the control of the Court during the term, the biddings at the Master's sale of land may be, on sufficient cause shown, opened

again after having been once opened, and the re-sale confirmed."

Mayo vs. Harding, 3 Tenn. Chan. 237.

Where an advance of nearly one hundred per cent. being offered, the sale was properly set aside and the property re-ordered sold.

Reese vs. Copeland, 6 Lea, 190 (Tenn.)
Wilson vs. Shields, 3 Baxter, 65.

"What precise circumstances, calculated to diminish the price of the property, would justify the Chancellor in setting aside the sale, or opening the biddings, must be left in a great degree to his discretion. This Court should be slow to control that discretion, unless the case presented a very palpable error in the exercise of it."

Owen vs. Owen, 5 Humph. 356.

"As it is the duty of the Court to see that property sold at a chancery sale be sold for the best price that can be had, it is allowable to open the biddings merely upon the offer of a higher price, if the advance is sufficient to furnish an inducement, under all the circumstances, for a re-sale of the property."

Church vs. Bailee, 2 Leg, Rec. Rep. 169, 29 Pittsb. Leg. J. 20.

Stewart vs. Stewart, 27 W. Va. 167.
Blackburn vs. The Selma Co., 3 Fed. Rep. 689.

The foregoing authorities fully support our position that it was the duty of the Court in the exercise of its wise discretion to set aside the confirmation and offer the Indian minor's land for re-sale. That the Court possessed power to do so at the term of Court at which the decree of confirmation was entered, it seems

to us, there can be no doubt. Under the law, and in justice to to the rights of these wards, to whom the trial Court owed a double obligation, first, as general wards of the government as Indian citizens, and second, as infant wards of tender years, we confidently submit that the decree of the trial Court and its affirmation by the Court of Appeals of Indian Territory should be sustained and that the judgment of the United States Circuit Court of Appeals should in all things be reversed.

Respectfully submitted,

WILLIAM T. HUTCHINGS,
GEORGE A. MURPHEY,
WM. P. Z. GERMAN,
Solicitors for Laurel Oil & Gas Company, Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

No. 493.

LAUREL OIL & GAS COMPANY,

Appellant

vs.

ROBERT W. MORRISON, CHARLES W. S. COBB, JOHN E. McKINNEY, Et. Al.

Appellees.

Appeal from the United States Circuit Court of Appeals, for the Eighth Circuit.

BRIEF OF ROBERT W. MORRISON, Et. Al. Appellees.

APPELLEES' STATEMENT OF THE CASE.

The Appellant's statement of the case is not only inaccurate but inadequate as a proper presentation of the controlling facts involved.

December 22, 1905, Monday, Durant was appointed Guardian of his two minor children, Edith and Edna Durant, born September 2, 1899.

The guardian presented his petition to the United States Court, sitting at Sapula, in probate, praying for an order to lease the lands of his wards for oil and gas purposes.

The Court referred the subject matter of the petition to Thomas A. Sanson, Master in Chauncery, for investigation, report, etc. After taking considerable testimony, the Master concluded that the best interests of the minors would be more efficiently and adequately protected by advertising the said leases for sale by sealed bids, as provided by the then existing general order or rule of said Court, and the Master so reporting, was authorized and appointed by said Court to make sale accordingly. (Ibid 68.)

Pursuant, thereto, the said leases were offered for sale to the highest and best bidders March 5, 1906. The Appellees' bid for the Edith Durant allotment of one hundred and sixty acres, thirty-four hundred and ninety ($3490.00) dollars, and were awarded said leases by the Master, who, according to the fact, declared and reported to the Court that they were the highest and best bidders for the same. Promptly thereupon the Appellees paid into court the amount of their said respective bids.

Prior to January 18, 1906, but one well had been drilled in the neighborhood of these leases in what is now known as the Glenn Pool. The nearest development was about ten miles distant. But two wells had been drilled in this pool prior to March 5, 1906. The first well was drilled by Chessly and Lindsey, and according to the testimony taken before the Master January 18, 1906, was estimated at about fifty barrels per day. (Ibid pages 27-29.)

On the 16th day of December, 1905, Frank Chessly and L. W. Lindsey induced the guardian to execute to them, oil and gas leases on said allotments for a period ending December 15, 1907, at one-tenth royalty and a cash bonus of eight hundred ($8.00.00) dollars for each

minor's allotment of one hundred and sixty acres. These leases were never approved by the Court nor by the Secretary of the Interior.

On March 7, 1905, the appellees deposited with the Master in Chancery, their certified checks for the amount of their respective bids, which were received by the Master and are still in the possession and control of the Court.

On March 9, 1906, the guardian, Monday Durant, pursuant to the terms of said sale, executed to the appellees, oil and gas leases upon the said respective allotments in the form and manner as prescribed and subsequently approved by the said Court. (Ibid pages 15-19.)

On March 26, 1906, the Master filed his report recommending the approval of the leases in question to the appellees and thereupon exceptions were filed to such report by Lindsey and Chessly and the Laurel Oil & Gas Company. (Ibid pages 44-48.)

At the judicial sale of March 5, 1906, both the Laurel Oil & Gas Company and Chessly and Lindsey were lower and unsuccessful bidders for the Edith & Edna Durant allotments.

None of these exceptions raised any question of fraud, accident or mistake or inadequacy in price, but were predicated principally upon the contention that the exceptants were entitled to make effective the alleged leases executed to them by the guardian under date of December 16, 1905, and which were without any legal warrant whatever. The exceptions by the Laurel Oil & Gas Company were not argued and the attorneys for that Company at the time of the submission, informed the court that they would not insist upon their exceptions to the Master's report.

March 29, 1906, the guardian filed his petition praying the Court to approve the leases to the Appellees on the respective allotments of his wards. On the same day

the exceptions were fully argued before, and the entire matter submitted to, the Honorable Louis Sulzbacher, presiding judge of the United States District Court for the Western District of the Indian Territory, then sitting at Sapulpa. (Ibid 11-17.)

No final action was taken by said court until the 11th day of June, 1906, when the court, then sitting at Sapulpa, the Honorable Louis Sulzbacher, presiding, rendered an elaborate written opinion overruling the exceptions to the Master's report and approving such report in all particulars. On the same day said Court caused to be entered of record specific and comprehensive decrees approving, ratifying and confirming in all particulars the said respective leases to the appellees. These decrees recited interalia:—

."That the said lease is upon the form and executed in the manner provided by the Interior Department and it appearing to the satisfaction of the Court from the report of the Master in Chancery filed herein, that the said land has been leased to the highest and best bidders therefor, and that it is for the best interests of the said minor and her estate that this lease should be approved; it is therefore ordered, adjudged and decreed by the Court, that the lease executed by Monday Durant, Guardian, etc., on the 9th day of March, 1906, to the above named lessees be and the same is hereby in all things approved, ratified and confirmed." (Ibid pages 49-50).

The Court during the afternoon of June 11, 1906, refused to set aside the said respective orders of confirmation and again at 2 p. m., on the next day, June 12th, read a written opinion approving and confirming these leases in favor of the Appellants. Thereafter and on the same day in re Edith Durant, a minor, the Laurel Oil & Gas Company, appeared and filed of record, the following motion:—

"Comes now the Laurel Oil & Gas Company and moves the Court that it be granted to bid on the sale of the oil and gas mining lease on the allottment of said

minor and file with this court a certified check as the cash bonus bid and that cash bonus bid will be in a sum not less than eight thousand dollars and one-tenth royalty."

Thereafter at 7 p. m., June 12, 1906, the said Court signed and entered of record, the following order:—

"Upon the announcement by the Court this afternoon, that although these lease matters were still in the breast of the Court, no new sale should be made on to-morrow morning, the Court expressed its reasons stating that it feared that bids would only be raised in isolated cases, that doubtful territory would be abandoned, and therefore the lands of some minors ignored, and they would not receive any bonus. Also fearing that perhaps combinations would be formed, and, in the end, less money bid than is now deposited."

"These doubts, however, have been removed when one party guaranteed that they would offer at least twenty per cent. additional on all leases, and another party presented certified checks which he said he would add to all of the present bids, pro rata, which would make almost sixty per cent. more than the bonus now offered, the Court, as then stated, deemed it proper for the best interest of the minor that the present bids should be changed, and new bids received and the land offered to the highest bidder."

"Provided, however, that the parties who desire to bid upon these leases, and who make these guarantees, must file with the Master in Chancery a written guarantee to this effect, accompanied by a certified check covering the amounts, equal to the highest bonuses already bid, together with additional sums offered, and agree that they will bid upon each separate lease to the amount equal to the highest bid now received by the Master, together with an additional pro rata amount of the difference offered, being not less than fifty per cent. of the present amount."

"It having been represented in open Court by the attorneys for Francis M. Selby and Robert Morrison and his associates that they doubted the Court's authority to

set aside its former order and to cancel the orders for leases already signed, that they will apply to the Court of Appeals for a supersedeas, and asking the Court that the sales announced for nine o'clock a. m., on the 13th be postponed until three p. m. It is ordered that the Master shall open the sale at nine a. m., to-morrow, but to offer for sale at that time only the leases in No. 110 Jonah Yellowhead and No. 263 Joseph Berryhill, and then that he shall adjourn his sale until three p. m., the same date."

And thereupon the said Court made and entered the following decree of revocation June 11, 1906. No. 260 probate. In Edith and Edna Durant, minors. Monday Durant, guardian.

"It is considered and ordered by the Court that the order made herein on June 11, 1906, authorizing and ordering the guardian to enter into an oil and gas mining lease with Robert W. Morrison and his associates, be and the same is hereby set aside for the reason that a much better lease can be made and a much higher bonus obtained." (Ibid page 52.)

The leases both of the Appellants and the Appellees are identical in form, terms and conditions as required by the Department of the Interior with the exception of difference only in the amount of bonus offered.

No exception was ever taken by any of these exceptants or by anyone else to the decree of the Court entered June 11, 1906, confirming these leases in favor of the Appellants.

The inducing cause influencing the Court on the 12th day of June, 1906, to revoke its solemn decree of ajudication in favor of the Appellants entered of record the day preceding, was the advance offer to bid more than the price realized at the Court's own sale of March 5, 1906. There was no reason existing, nor in any manner cause shown to the Court for the purpose of inducing a revocation of its confirming decree in favor of the Ap-

pellants of June 11, 1906, other than the bare offer or proposition thereafter submitted by parties having no legal standing to challenge the legal integrity or validity of the Appellants' equitable rights acquired in virtue of the said judicial sale of March 5, 1906, and simply offering to bid more as of that particular time by reason of the enhanced value of the leases, resulting from operations and developments in the interim.

The Court having set aside its decree of confirmation of June 11, 906, in favor of the present Appellees for the sole reason that a higher bonus could be obtained, sold inter alia, a lease of eighty acres of the Edith Durant allottment to the Galbreath Oil & Gas Company upon the same terms as the lease to the present Appellees and for a bonus of $16,800.00, and a lease of the remaining eighty acres of said allottment on the same terms and for $2,000.00 bonus to the Appellant, the Laurel Oil & Gas Company, an unsuccessful bidder at the sale of March 5, 1906. The respective leases to the Galbreath Oil & Gas Company, and the Laurel Oil & Gas Company were subsequently made by the guardian and approved by the Court. After appeal to the United States Circuit Court of Appeals for the Eighth Circuit, the controversy as to the eighty acres leased to the Galbreath Oil & Gas Company was adjusted, and the controversy is now confined to the eighty acres leased to the Laurel Oil & Gas Company under the second lease.

The Appellants excepted to the decree of the Court of June 12, 1906, filed June 13th, revoking the decree of confirmation entered in their favor June 11th and moved the Court to set aside the same; their exceptions were overruled and their motion refused. (Ibid pages 55-57-58.)

The Appellants sued out both writ of error and appeal to the United States Court of Appeals in the Indian Territory predicated upon the action of the Court in the premises.

Counsel for the Appellants having doubts as to which was the proper and remedial writ, advised as a precautionary measure, the prosecution of both writ of error and a writ of appeal.

Files vs. Brown 59 C. C. A., 403.

The said Court of Appeals ordered that the appellants' cause sur writ or error at No. 774 be consolidated with their cause sur writ of appeal at No. 806 and that the whole matter be treated as an appeal in equity. (Ibid page 96.)

The Court of Appeals of the Indian Territory divided in opinion which was equivalent to affirmation of the judgment of the Court below. (Ibid pages 89-90.)

The present Appellees thereupon took writ of error and appeal from said judgment to the United States Circuit Court of Appeals or the Eighth Circuit. The United States Circuit Court of Appeals held that the controversy was properly cognizable in equity and after due consideration, decided the case in favor of the present appellees.

STATEMENT OF QUESTION INVOLVED.

Where there has been a judicial sale of oil and gas leases on Creek minors' lands, regularly made at public auction for a fair and adequate price at the time, and which sale has been duly confirmed and leases delivered by the Court; where the vendees have been guilty of no fraud, the Court neither misled, nor confirmation induced by fraud, accident or mistake, and no legal objection appeared or was made against the decree of confirmation when entered, had the Court power at the same term to abrogate its decree of confirmation and order a resale

against the protest of the vendees upon the ground alone that an unsuccessful bidder appeared in court, and by reason of the increased value of the property in the interim, offered to bid more therefor than the bid of the original vendees.

ARGUMENT:

The able opinion of the learned Circuit Court of Appeals comprehensively treats and disposes of every material question involved in this appeal.

No question is now raised by the Appellant that was not raised before, and considered by the Circut Court of Appeals and no argument which we could now make would add to the force and learning of that opinion.

We therefore submit the case upon the opinion of the Circut Court of Appeals of which the following is a copy.

SYLLABUS.

1. APPEAL AND ERROR—ASSIGNMENT REQUISITE FOR ERRORS NOT JURISDICTIONAL—CROSS ERRORS NOT ASSIGNABLE—*An appellate court will notice without objection or assignment the lack of jurisdiction of an inferior court.*

   But alleged errors in the exercise of its jurisdiction can be presented only by appeal or writ of error and a proper assignment of errors. Cross errors are not judicable in a federal appellate court.

2. BILL OF EXCEPTIONS—UNNECESSARY IN EQUITY.—*A bill of exceptions has no function and is unnecessary in any equity proceeding in the absence of a trial of some issue by a jury, because the appeal brings the entire record, including the evidence, objections and exceptions to the appellate court.*

3. SAME—APPEALS TO COURT OF APPEALS OF INDIAN TERRITORY TAKEN AS TO COURT OF APPEALS OF EIGHTH CIRCUIT.—*Appeals to the Court of Appeals of the Indian Territory from orders, judgments and decrees of the trial courts made in the exercise of their probate jurisdiction must be taken, and the practice therein is governed by the method of taking and the practice in Appeals from the Circuit Courts to the Circuit Court of Appeals of the Eighth Circuit (Public Acts, 1904-05, p. 1081, c. 1479, §12) and not by §§1385, 1386 Mansfield's Digest of the Laws of Arkansas.*

116 4. INDIAN MINORS' ALLOTMENTS — SECRETARY OF INTERIOR HAS NO JURISDICTION OF LEASES OF.—*Leases of allotments of Indian minors in the Indian Territory confirmed and approved by the trial courts of that territory since April 26, 1906, are not subject to the approval or disapproval of the Secretary of the Interior, but the orders of the courts confirming and approving them are final.*

5. FINAL DECISION—ORDER AVOIDING CONFIRMATION OF SALE OF LEASE IS.—*A decision which completly determines the rights of parties in the pending proceeding, who are not jointly liable with others, is a final decision reviewable by appeal or writ of error, under the acts of Congress.*

An order which avoids a confirmation of a sale and an approval of a lease of allotment of an Indian minor is a final decision, because it completely determines the right of the purchaser thereunder.

6. JUDICIAL SALE—AVOIDANCE—EFFECT OF RULE THAT COURTS HAVE POWER OVER ORDERS AND DECREES DURING TERM.—*The general rule that the courts have power over their judgments, decrees and orders during the term at which they are rendered*

does not give them jurisdiction to avoid confirmed judicial sales without cause at the term at which they are confirmed, because the rights of purchasers vest thereunder upon confirmation.

The only effect of this rule on such sales is to enable the courts to consider alleged causes for avoiding them during the term on motions or orders to show cause upon due notice without the filing of formal bills for that purpose.

7. JUDICIAL SALES—BEFORE CONFIRMATION OPENING FOR FURTHER BIDS ALOWABLE FOR GREAT INADEQUACY OF PRICE AND SLIGHT UNFAIRNESS.—*A successful bidder under an order or decree of court at a sale which is subject to confirmation by the court is a purchaser from the announcement of the sale to him by the officer and may thereafter be compelled to complete his purchase.*

Before confirmation a sale will not be set aside for mere inadequacy of price unless it is very great, yet if the inadequacy be great, slight circumstances of unfairness in the conduct of the party benefited will be sufficient to open it for further bids.

8. JUDICIAL SALE—VOIDABLE AFTER CONFIRMATION FOR FRAUD OR MISTAKE ONLY—IT MAY NOT BE OPENED FOR BETTER BIDS.—*After confirmation of a judicial sale the rights of the purchaser have vested. Neither inadequacy of price nor offers of higher prices, nor anything but fraud, mistakes, accident or some other cause for which equity would avoid a like sale between private parties, will warrant a court in avoiding the sale or in opening it for other bids.*

117 STATEMENT.

Pursuant to an order of the United States Court in the Western District of Indian Territory, which has the juris-

diction of a probate court, a lease of 160 acres of mineral land which had been allotted to Edith Durant, a minor Indian, was advertised for sale on sealed bids by Monday Durant, her guardian, and on the day of sale, March 5, 1906, the highest bonus bid for it was $3490, and this bid was made by Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene, who are now the appellants in this case, and will hereafter be so styled. The Laurel Oil & Gas Company, a corporation, one of the appellees, bid at the same time at this sale $2850 for this lease. On March 7, 1906, the appellants deposited the $3490 with the court and on March 9, 1906, the guardian executed the lease of the land to the appellants and they applied to the court for the confirmation of the sale and the approval of the lease. After notice to all parties in interest and a hearing the court on June 11, 1906, "ordered, adjudged and decreed that the lease executed by Monday Durant, guardian of Edith Durant, minor, on the 9th day of March, 1906, (to the appellants) be, and the same is hereby in all things approved, ratified and confirmed." On the next day the Laurel Company, the unsuccessful bidder at the former sale, made a motion for leave to bid again for the lease of this land and offered to bid a bonus of $8000. Thereupon the court set aside the order of June 11, 1906, for the sole reason that a higher bonus could be obtained, and on June 14, 1906, it sold a lease of 80 acres of this land on the same terms as the former to the Galbraith Oil & Gas Company for a bonus of $16,800 and a lease of the other eighty acres on the same terms to the Laurel Oil & Gas Company for $2000. The leases to these parties were subsequently made by the guardian and the court confirmed these sales and approved these leases. The appellants then sued out a writ of error from the Court of Appeals of the Indian Territory to reverse the order which set aside the decree of confirmation of the sale and of approval of the lease to them and they also appealed from that order. The Court of Appeals of the Indian Territory consolidated the two cases, heard them as an appeal in equity and affirmed the order below because the court was evenly divided in opinion.

The appellants have brought the latter judgment here by writ of error and also by appeal.

Since the case came to this court the controversy over the eighty acres leased to the Galbraith Oil & Gas Company has been settled and the only dispute remaining relates to the eighty acres leased to the Laurel Oil & Gas Company under the second lease.

SANBORN, *Circuit Judge*, after stating the case as above, delivered the opinion of the court:

As this is a proceeding in equity, the writ of error must be dismissed and the case must be considered and decided upon the appeal, and it is so ordered.

118. The real question in the case is, may a court of equity during the term at which the confirmation is made, lawfully avoid an executed judicial sale which it has confirmed, on the sole ground that a larger price may be obtained by a second sale?

Before entering upon the consideration of this question some preliminary objections must be considered. Counsel for the appellees insist that this issue is not within the jurisdiction of this court (1) because the writ of error issued by the Court of Appeals of the Indian Territory to the trial court was not allowed by any Judge of the former court or by the trial Judge, (2) because the petition for the writ of error and the assignment of errors thereon show no filing marks and (3) because the assignment of the errors of the trial court was not filed until 36 days after the appeal was taken, and they cite *U. S. v. Goodrich*, 54 Fed. 21, 4 C. C. A. 160, and *Flahrity v. Union Pac. Ry. Co.*, 56 Fed. 908, 6 C. C. A. 167. But these objections do not assail the jurisdiction of the Court of Appeals of the Indian Territory, for this is a proceeding in equity reviewable by appeal, an appeal was taken and that court had ample power to hear and decide the merits of the cases upon that appeal either upon an assignment of errors filed out of time or without any assignment whatever. A hearing on an assignment filed too late may have been error, but it was not jurisdictional error. It related

merely to the method of the exercise by the appellate court of its undoubted power and not to its total want of jurisdiction, and hence it is reviewable in this court only upon an appeal and a proper assignment of errors. *Rogers v. Penobscot Mining Co.*,....C. C. A....., ...Fed ....., decided at this term.

The appellees have taken no appeal and they cannot invoke the jurisdiction of federal appellate court to consider or decide questions of this nature by an assignment or by an argument of cross errors. *Guarantee Co. v. Phenix Ins. Co.*, 59 C. C. A. 376, 379, 124 Fed 170, 173.

Another objection is that the record contains no bill of exceptions. But no bill of exceptions is requisite in a proceeding in equity because the appeal brings the entire record to the appellate court. *Dodge v. Norlin*, 66 C. C. A. 425, 431, 133 Fed. 363; 369; *Teller v. U. S.*, 49 C. C. A. 263, 111 Fed. 119.

Counsel argue that the appeal in this case was not taken in accordance with the method prescribed by Mansfield's Digest of the Laws of Arkansas for appeals from probate courts to circuit courts (§§1385, 1386) and that on such an appeal a bill of exceptions is essential. But Congress has provided that appeals from the United States Courts in the Indian Territory to the United States Court of Appeals in the Indian Territory should be taken in the same manner as is provided in cases taken by appeal from the circuit courts of the United States to the Circuit Courts of Appeals of the United States for the Eighth Circuit. Act March 3, 1905, Public Acts 1904-5, c. 1470, §12, p. 1081.

This appeal was so taken. No bill of exceptions is required to bring the entire record before this court
119 in a suit in equity on an appeal from a circuit court and hence none was essential to do so in the Court of Appeals of the Indian Territory. Sections 1385 and 1386 of Mansfield's Digest are not in force in the Indian Territory and the act of Congress must prevail.

Another contention is that the merits of this case are not reviewable here because the sale and the lease to the

appellants were subject to the approval of the Secretary of the Interior and hence the order which avoided their confirmation was not a final order. The United States Courts in the Indian Territory have the powers of courts of probate. 26 Stat. 95, §31; 33 Stat. 573, §2. The act of Congress which approved and ratified the supplemental agreement between the Commissioners of the Creek nation of Indians and the United States, which was approved June 30, 1902, provided that leases by Creek citizens for mineral purposes might be made with the approval of the Secretary of the Interior but not otherwise. 32 Sta. 794, c. 1323, §17. By the act to provide for additional United States Judges in the Indian Territory, approved July 28, 1904, Congress enacted that "full and complete jurisdiction is hereby conferred upon the district courts in said Territory (the Indian Territory) in the settlement of all estates of decedents, the guardianship of minors and incompetents, whether Indians, freedmen, or otherwise." 33 Stat. 573, c. 1824, §2. By the act of March 3, 1905, making appropriations for the expenses of the Indian department and for fulfilling treaty stipulations with the Indian tribes, the Secretary of the Interior and the Attorney General were empowered to investigate leases of allotted lands in the Indian Territory and to bring suits to cancel them for fraud. But the act expressly provides that "no lease made by any administrator, executor, guardian or curator which has been investigated by and has received the approval of the United States Court having jurisdiction of the proceeding shall be subject to suit or proceeding by the Secretary of the Interior or Attorney General" and that "no lease made by any administrator, executor, guardian or curator shall be valid or enforcible without the approval of the court having jurisdiction of the proceeding." 33 Stat. p. 1060, c. 1479. On April 15, 1905, the Secretary of the Interior adopted regulation No. 15, which reads thus: "In cases of transfers, leases, and sales to which minors are parties grantor, the transfer, lease or sale must be made by a guardian, and the lease, deed, or instrument of conveyance must be accompanied by certified copies of the orders of the proper court appointing the guardian and authoriz-

ing him to make such transfer, lease, or sale, and it must be fully understood that the department reserves the right to use any means at its disposal for the purpose of ascertaining whether the consideration given is the fair value of the land, and whether the proposed lease or sale is for the best interests of the Indian."

By the act to provide for the final disposition of the affairs of the five civilized tribes in the Indian Territory approved April 26, 1906, (Public Acts 1905-6, pp. 137, 145, 148) commonly called the Curtis Act, the Congress enacted:

120. "SEC. 20. That after the approval of this act all leases and rental contracts, except leases and rental contracts for not exceeding one year for agricultural purposes for lands other than homesteads, of full-blood allottees of the Choctaw, Chickasaw, Cherokee, Creek and and Seminole tribes, shall be in writing and subject to approval by the Secretary of the Interior and shall be absolutely void and of no effect without such approval: *Provided,* That allotments of minors and incompetents may be rented or leased under order of the proper court: *Provided further,* That all leases entered into for a period of more than one year shall be recorded in conformity to the law applicable to recording instruments now in force in said Indian Territory."

SEC. 29. That all acts and parts of acts inconsistent with the provisions of this act be, and the same are hereby, repealed."

The regulation of the Interior Department is effective so far as it is sustained by the acts of Congress and is ineffectual so far as it is in conflict with them. In the light of the legislation to which reference has now been made there are two conclusive answers to the argument that the order avoiding the sale and the lease to the appellants was not a final order. In the first place the acts of April 28, 1904, and April 26, 1906, conferred "full and complete jurisdiction" of the guardianship of minors whether In-

dians, freedmen, or otherwise, and of the rental or lease of their allotments upon the trial courts of the Indian Territory and the later act repealed all acts and parts of acts inconsistent therewith. The provision of the act of June 30, 1902, that leases for mineral purposes might not be made without the approval of the Secretary of the Interior is inconsistent with the grants of these later acts. There can be no full and complete jurisdiction of the guardianship of minor Indians and of the leasing of their allotments in a court whose judgments are reviewable and reversible by an officer of another department of the government. Leases of allotments of Indian minors approved by the trial courts of the Indian Territory after April 26, 1906, were therefore not subject to approval or disapproval by the Secretary of the Interior. Those courts had full and complete jurisdiction to sell the leases and to finally approve and confirm the sales and the leases. The lease to the appellants is in this category. It was approved and the sale of it was confirmed on June 11, 1906, and the order which approved it was therefore a final order.

In the second place, even if the lease to the appellants had been subject to the approval of the Secretary of the Interior and if the order of the court confirming the sale and approving the lease had been a mere recommendation of the court to him, yet that order was an indispensable prerequisite to the existence of a valid lease of the minor's land. The Secretary had no power to make or approve such a lease without the approving order of the court. Therefore, the order which avoided the sale and the lease to the appellants deprived them of all right, privilege and opportunity to secure or enforce the lease which the guardian had made to them. A decision which com-
121 pletely determines the rights of parties in the pending proceeding, who are not jointly liable with others, is a final decision reviewable by appeal or by writ of error, under the acts of Congress. *Standley v. Roberts*, 8 C. C. A. 305, 308, 59 Fed. 836, 839, and cases there cited. The appellees cannot escape the main issue in this case, and we turn to its consideration.

Counsel for the appellees indulge in extended argument and the citation of many authorities in support of the position that a court has jurisdiction of its judgments, decrees and orders and may summarily modify, revoke or avoid them, without cause, during the term at which they are made, and from this premise they argue that the avoidance of the sale and lease to the appellants was regular and right. There is an established general rule that a court has power over its judgments, orders and decrees during the continuance of the term at which they are first made. But it is a rule of practice rather than of right. It is a rule that during the term judgments, orders and decrees may be modified and avoided summarily without the necessity of filing a formal bill and commencing a suit for that purpose. Moreover, the power of a court under this rule to modify or avoid without cause is limited to the modification or avoidance of judgments, orders and decrees which determine issues between parties litigant before it and under which no rights have vested. .*Ex parte* Lange, 18 Wall. 163; *Bassett v. U. S.*, 9 Wall. 38; *Doss v. Tyack*, 14 How. 297, 312, 313; *Goddard vs. Ordway*, 101 U. S. 745, 751, 752; *Henderson v. Carbondale Coal & Coke Co.*, 140 U. S. 25, 40; *Bronson v. Schulten*, 104 U. S., 410, 415; *Aetna Life Ins. Co. v. Board of County Com'rs.*, 79 Fed. 575, 25 C. C. A. 94; *Underwood v. Sledge*, 27 Ark. 295, 297; *Bradley v. Slater*, 78 N. W. (Neb.) 1069. It does not empower a court to reverse or avoid without cause a judicial sale during the term at which it has been confirmed, because in such a case the character of vendor has been added to that of judicial tribunal and the rights of the purchaser have vested by virtue of the confirmation of the sale. *Pewabic Mining Co. v. Mason*, 145 U. S., 349, 367. When a court becomes a vendor of an executed sale it is no less bound by the rules of law, of equity and of morals than is a private seller and it may avoid its sale on the same grounds and on no others. Hence the only effect of the rule that a court has power over its orders and decrees during the term at which it is confirmed, is to relieve the applicant from the necessity of filing a bill in equity for the purpose and to permit him to apply for the relief he seeks upon due

notice to the purchaser by motion or order to show cause.

Upon what grounds then may such a sale be lawfully set aside? The old rule in the English chancery was that a bidder at a sale under an order or decree of a court, which was subject to the subsequent report to, and confirmation by the judicial tribunal, was not a purchaser but was one who merely made a tender or offer to purchase and that he could not be compelled to complete his bargain until the confirmation of the sale. This rule,
122 however, has never prevailed in this country and it has been abolished by act of Parliament in England. Act 1867, 30 and 31 Victoria c. 48, §7. On the other hand, the rule is without exception in the national courts, and it has been very generally adopted in the state courts, that the bidder at a sale by a master or receiver under an order or decree which contemplates a subsequent report and confirmation of the sale becomes a purchaser when the officer announces the sale to him. Thereafter he is liable for and may be compelled to pay the purchase price he bids. Thereafter he may be made to suffer the loss of the destruction or depreciation, and may be permitted to reap the profit of the appreciation of the property. Nevertheless he buys subject to the confirmation or avoidance of the sale by the court, and as he is aware of this fact and the court is selling the property of others and is acting in the dual capacity of trustee for the owners and of a judicial tribunal, it is undoubtedly its duty until confirmation to exercise a wise judicial discretion to secure for the owners the largest price consistent with a just regard for the rights of the bidder. Hence, if a material advance in price is offered and secured by a deposit or by a bond before the sale is confirmed, the sale has sometimes been opened, futher bids have been received and a sale to the highest bidder has been confirmed. In *Blanks v. Farmers' Loan & Trust Co.*, 59 C. C. A. 59, 122 Fed. 849, we find that mortgaged lands were offered for sale by a master under a decree of the court and a bid was made and reported of $115,900; before the confirmation of the sale, however, an advance of $10,000 was offered and secured,

whereupon the court opened the sale, received 24 other bids and finally confirmed the sale to the highest bidder for $140,000. In North Carolina and some other states it is a settled rule of practice to open the sale and receive new bids upon a guarantee of an advance of ten per cent. *Attorney General v. Roanoke Navigation Co.*, 86 N. C. 408, 413.

But the practice of opening sales upon the offer of a secured bid of ten per cent. advance has never prevailed in the national courts. The rule there is that mere inadequacy of price unless very great is insufficient to warrant the opening of the sale, but that if the inadequacy be great, slight circumstances of unfairness on the part of the party benefited will be sufficient to prevent its confirmation and to warrant the opening of the sale for farther bids. *Ballentine v. Smith, Trustee*, 57 Sup. Ct. Rep. 527, 528; *Files v. Brown*, 59 C. C. A. 403, 407, 124 Fed. 133, 137.

But there is a marked and radical distinction between the situations, the rights of the parties and the established practice before and after the confirmation of the sale. The purchaser bids with full notice that the sale to him is subject to confirmation by the court and that there is a power granted and a duty imposed upon the judicial tribunal when it comes to decide whether or not the sale shall be confirmed to so exercise its judicial power as to secure for the owners of the property the largest practicable returns. He is aware that his rights as a purchaser are subject to the rational exercise of this discretion. But after the sale is confirmed that discretion has been exercised. The
123 power to sell and the power to determine the price at which the sale shall be made has been exhausted. From thenceforth the court and the successful bidder occupy the relation of vendor and purchaser in an executed sale and nothing is sufficient to avoid it which would not set aside a sale of like character between private parties. Hence the rule is settled and it seems to be universally approved that after confirmation of a judicial sale neither inadequacy of price nor offers of better prices nor anything

but fraud, accident, mistake or some other cause for which equity would avoid a like sale between private parties will warrant a court in avoiding the confirmation of the sale or in opening the latter and receiving subsequent bids. *Files v. Brown*, 59 C. C. A. 403, 407, 408, 124 Fed. 133, 137, 138; *Berlin v. Melhorn*, 75 Va. 639, 641; *Pewabic Mining Co. v. Mason*, 145 U. S. 349, 367; *Thomson v. Ritchie*, 30 Atl. (Md.), 708, 710; *Ins. Co. v. Cottrell*, 9 S. E. (Va.), 132, 133; *Fidelity Ins. & Safe-Deposit Co. v. Roanoke St. Ry. Co.*, 98 Fed. 475, 476; *Trull v. Rice*, 92 N. C., 572, 574; *Pritchard v. Askew*, 80 N. C., 86; *Bank v. Jarvis*, 28 W. Va. 805; *In re Third National Bank*, 9 Biss. 535; *Collier v. Whipple*, 13 Wend. 224, 226; *Watson v. Birch*, 2 Ves. Jr., 51, 54; *Williamson v. Dale*, 3 Johns. Ch. 290, 291; *Ware v. Watson*, 7 De Gex. M. & G. 739, 741; *Condon v. Maynard*, 18 *Atl.* (Md.) 957, 958; *Smith v. Black*, 115 U. S. 308, 317; *Barling v. Peters*, 25 N. E. (Ill.) 765, 768; *Graffam v. Burgess*, 117 U. S. 180, 191, 192; *Evans v. Maury*, 112 Pa. St. 300, 312.

This rule is so firmly established that it is no longer debatable and the cogent and all sufficient reason for it is that judicial sales would become farces and rational men would shun them and refuse to bid if after the confirmation unsuccessful bidders or dissatisfied litigants could avoid them and secure new sales by offers of higher prices, when they thought the purchase a fortunate one, and thus secure the profits in that event and leave the buyer to suffer the losses if the property depreciated in value or the purchase was unwise. No doubt remains regarding the proper decision in this case. The sale to the appellants was made on notice. The appellee, the Laurel Oil & Gas Company, made an unsuccessful bid at that sale. The lease to the appellants was executed and they paid the amount of their bid to the court or its representative more than three months before the sale was confirmed. The sale was confirmed after notice over objections and after a full hearing. There was no fraud, no mistake, no surprise, no accident, no equitable ground for setting it aside. There was not even evidence that the purchase price was in-

adequate at the time of the sale. There was nothing but the mere fact that an unsuccessful bidder in March who failed to offer more until after the sale was confirmed in June suddenly became anxious to pay more than $5000 above the price it had offered in March. The natural inference is that this property which is of a speculative nature had appreciated in value between the day of the sale and the day when this offer was made. If so, the purchaser who made the highest bid before the confirmation and paid the representative of the court the amount of it,
and not the lower bidder who paid nothing, was,
124 after the confirmation, entitled upon every equitable
principle to the benefit of the appreciation. The order of the United States Court for the Western District of the Indian Territory which set aside and avoided the decree of that court confirming the sale and approving the lease to the appellants and the decree of the Court of Appeals of the Indian Territory which affirmed it are hereby reversed and this case is remanded to the trial court with directions to affirm and enforce its order and decree which confirmed the sale and approved the lease to the appellants and to take any further proceedings necessary to that end.

Hook, Circuit Judge, concurs in the result.

See Fed. Rep. 154, p. 617.

Filed July 10, 1907.

JOHN J. SHEA,
WM. J. BREENE,
EDMOND C. BREENE,
Solicitors for Appellees.

Office Supreme Court, U. S.
FILED.
OCT 16 1908
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 198.

LAUREL OIL AND GAS COMPANY, APPELLANT,

vs.

ROBERT W. MORRISON ET AL.

SUPPLEMENTAL BRIEF AS TO JURISDICTION ON BEHALF OF APPELLANT AT REQUEST OF THE COURT.

WILLIAM T. HUTCHINGS,
GEORGE A. MURPHEY,
WM. P. Z. GERMAN,
Solicitors for Appellants.

IN THE

UPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 198.

LAUREL OIL & GAS COMPANY, APPELLANT,

vs.

OBERT W. MORRISON, CHARLES W. S. COBB, JOHN E. McKINNEY, ET AL., APPELLEES.

PPLEMENTAL BRIEF AS TO JURISDICTION ON BEHALF OF APPELLANT AT REQUEST OF THE COURT.

At the request of this honorable court, made at the close the oral argument on Wednesday, October 14, 1908, this morandum is submitted on behalf of the appellant as he jurisdiction of this court in this case in an appeal from Circuit Court of Appeals to this honorable court.

By act of Congress of March 3, 1891 (26 St. at L., 829), ich was an act establishing the Circuit Court of Appeals, following provision is made as to appeals from the courts Indian Territory:

"SEC. 13. Appeals and writs of error may be taken and secuted from the decisions of the United States court in Indian Territory to the Supreme Court of United States

or to the Circuit Court of Appeals in the Eighth Circuit in the same manner and under the same regulations as from the circuit or district courts of the United States, under this act."

In the act of Congress of March 1, 1895 (28 U. S. St. at L., 698), which was an act providing for the appointment of additional judges of the United States court in the Indian Territory, it is provided as follows:

"SEC. 11. Writs of error and appeals from the final decision of said appellate court (of Indian Territory) shall be allowed, and may be taken to the Circuit Court of Appeals for the Eighth Judicial Circuit in the same manner and under the same regulations as appeals are taken from the circuit courts of the United States."

The act of Congress of June 16, 1906 (34 U. S. St. at L., 276), which is the enabling act providing for the admission of the Territory of Oklahoma and Indian Territory into the Union as a State, the following provision is made as to appeals:

"SEC. 15. That all appeals or writs of error taken from the Supreme Court of Oklahoma Territory, or the United States Court of Appeals in the Indian Territory to the Supreme Court of the United States or the United States Circuit Court of Appeals for the Eighth Circuit, previous to the final admission of such State shall be prosecuted to final determination as though this act had not been passed. And all cases in which final judgment has been rendered in such territorial appellate courts which appeals or writs of error might be had except for the admission of such State may still be sued out, taken, and prosecuted to the Supreme Court of the United States or the United States Circuit Court of Appeals under the provisions of existing laws, and there held and determined in like manner." * * *

As we view it, the amount involved does not affect the jurisdiction in the cases appealed from the United States courts of the Indian Territory, either to the Circuit Court of Appeals of the Eighth Circuit or from that court to the

Supreme Court of the United States, as this court is our ultimate and final appellate court under the provisions of the acts of Congress. The courts of Indian Territory are creations of the acts of Congress and any cases brought in these courts within their jurisdictions may be appealed in the natural course of procedure through the Court of Appeals of that Territory to the Circuit Court of Appeals and thence to this court.

We have filed with the clerk of this court, as suggested by the court, an affidavit that the value of the matter in controversy, to wit, the mineral lease, is at least ten thousand dollars and may be twenty-five thousand to fifty thousand dollars, a copy of which is hereto attached.

Respectfully submitted,

WILLIAM T. HUTCHINGS,
GEORGE A. MURPHEY,
WM. P. Z. GERMAN,
Solicitors for Laurel Oil & Gas Company, Appellant.

CITY OF WASHINGTON,
District of Columbia, ss:

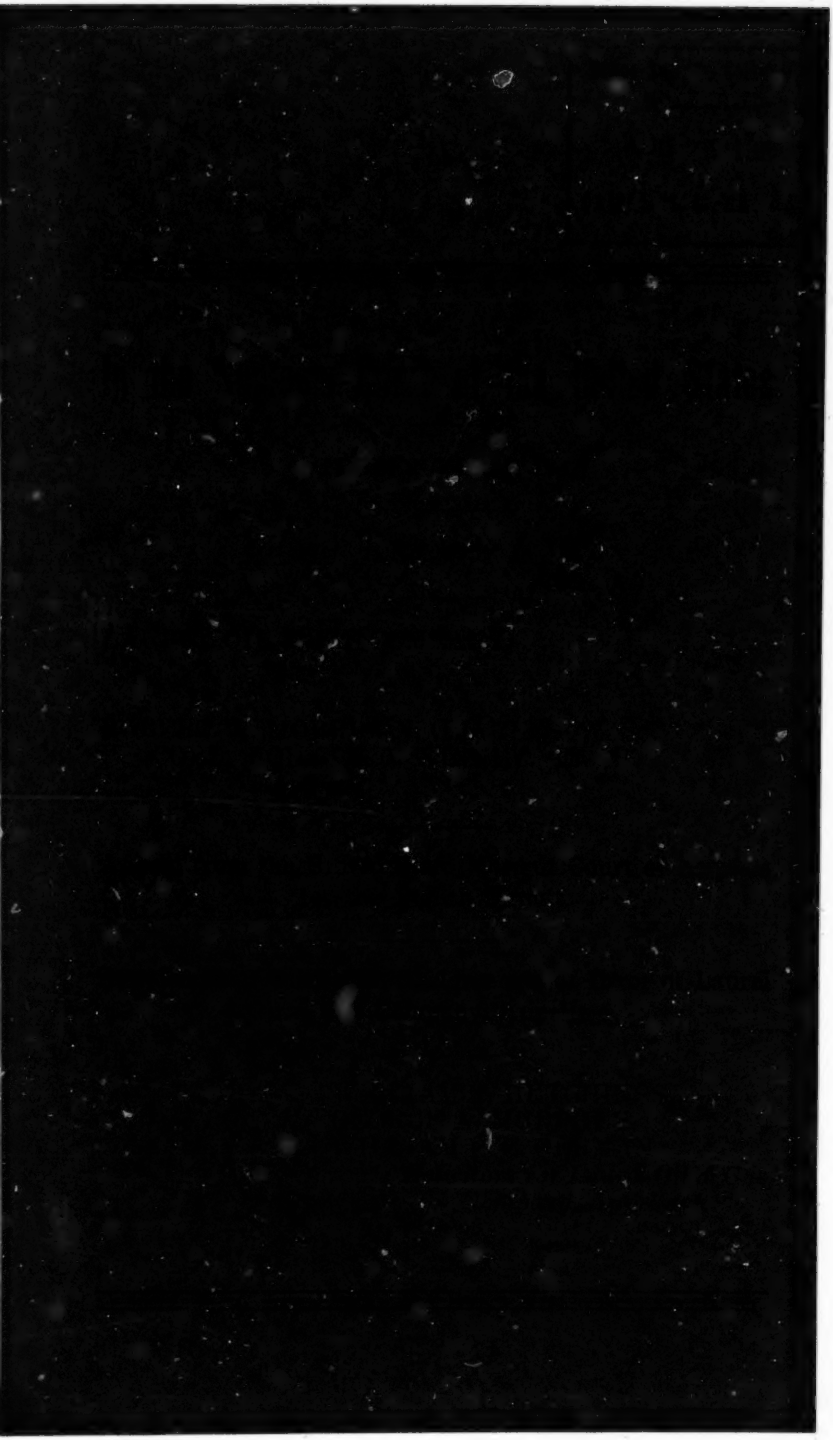
George A. Murphey, being first duly sworn, upon his oath deposes and says that he is one of the solicitors for the Laurel Oil & Gas Company, appellant in the case of Laurel Oil & Gas Co., appellant, *vs.* Robert W. Morrison *et al.*, appellees, now pending in this court, and being No. 198 of the October term, 1908, and that the value of the property in controversy and involved in this suit, to wit, the oil and gas mining lease of Edith Durant, is at least ten thousand dollars and may be of the value of from twenty-five to fifty thousand dollars. Further affiant saith not.

GEORGE A. MURPHEY.

Subscribed and sworn to before me this 15th day of October, 1908.

[SEAL.] JAMES D. MAHER,
Notary Public, District of Columbia.

[Endorsed:] File No. 20,896. Supreme Court U. S., October Term, 1908. Term No. 198. Laurel Oil & Gas Co., Appellant, *vs.* Robt. W. Morrison *et al.* Affidavit of George A. Murphey as to value of property in controversy. Filed October 15, 1908.



In the Supreme Court of the United States

OCTOBER TERM, 1907.

No. 493.

LAUREL OIL & GAS COMPANY,
Appellant,

vs.

ROBERT W. MORRISON, CHARLES W. S. COBB, JOHN E. McKINNEY, Et. Al.,
Appellees.

Appeal from the United States Circuit Court of Appeals for the Eighth Circuit.

Supplemental Brief with Assignments of Error of Laurel Oil & Gas Company, Appellant.

By inadvertence on the part of appellant's solicitors, the assignments of error filed in this honorable court were omitted from the brief of appellant heretofore filed in this cause. Fearing that such omission might be a technical non-compliance with the practice in this court, they are submitted herein as a supplement to appellant's brief and to be considered as a part of it, as though originally contained therein.

ASSIGNMENT OF ERRORS

I. "That the United States Circuit Court in and for the Eighth Judicial Circuit erred in deciding and decreeing that the Court of Appeals of the Indian Territory had jurisdiction to decide the merits of the case upon appeal without an assignment of errors being filed in time.

II. "The Court erred in deciding and adjudging that an appeal could be taken directly from the probate courts of Indian Territory to the Court of Appeals for the Indian Territory without first appealing the cause under Mansfield's Digest of the Laws of Arkansas to the United States Court."

III. "That the said Court erred in holding and adjudging that the act of Congress of April 26, 1906, commonly called the Curtis Act, 'providing that allotments of minors and incompetents may be rented or leased under the order of the proper court, rendered it unnecessary to obtain the approval or disapproval of the Secretary of the Interior to such minors' leases, and in decreeing that the lease to appellant belonged to this class, and did not need to have the action of the Secretary of the Interior thereon, said lease having been obtained by them at a guardian's sale holden on the 5th day of March, 1906, prior to the enactment of April 26, 1906, and in decreeing that the order of the United States Court which approved it was a final order."

IV. "That said Court erred in deciding and decreeing that even if the lease to the appellants had been subject to the approval of the Secretary of the Interior that the decision of the United States Court in setting aside the confirmation of such sale is a final decision, reviewable by appeal under the acts of Congress."

V. "That the Court erred in adjudging and decreeing that the United States Court had no jurisdiction or power to set aside its order of confirmation of the guardian's sale of March 5th, 1906, during the term at which such confirmation was made upon a showing and guaranty that a much larger bid could be realized at a second

sale, without a showing of fraud, accident mistake or some other cause, other than inadequacy of price."

VI. "That the Court erred in deciding and adjudging that the order of the United States Court for the Western District of the Indian Territory which set aside and avoided the decree of that court confirming the sale and approving the lease to the appellant and the decree of the Court of Appeals of the Indian Territory which affirmed it should be reversed, and in reversing the judgment and decrees of both of said courts."

VII. "That the Court erred in not making, rendering and entering a decree in favor of the said appellant, Laurel Oil & Gas Company, and against the appellee, affirming the judgment and decrees entered by the United States Court of the Western Judicial District and of the Court of Appeals of the Indian Territory affirming the decision of the former court, and sustaining the validity of the lease of appellant, the Laurel Oil & Gas Company."

VIII. "That the Court erred in making, rendering and entering a decree in favor of the appellees and against the appellant, the Laurel Oil & Gas Company, reversing the order and decree of the United States Court for the Western District of the Indian Territory, and the decree of the Court of Appeals of the Indian Territory, which affirmed the order and decree of the former court, for the reasons heretofore more fully set out and enumerated."

"In order that the foregoing assignment of errors may be and appear of record, the appellant, Laurel Oil & Gas Company, present the same to the Court and pray that such disposition be made thereof as in accordance with law and the statutes of the United States in such cases made and provided, and the practice in equity requires, and appellant prays a reversal of the judgment and decree entered by said Court in said cause."

Appellant has made reference in its brief in chief to the errors raised by these assignments of errors without setting them out in full therein. These references are to

be found under sub-divisions four, five and six of such brief on pages 32 to 39 inclusive and the argument predicated on these assignments is succinctly stated and authorities cited in support thereof. We have no additional argument or authorities to present to this honorable courtt than is therein contained.

Respectfully submitted,

WILLIAM T. HUTCHINGS,
GEORGE A. MURPHEY,
WILLIAM P. Z. GERMAN,
Solicitors for Laurel Oil & Gas Company, Appellant.

Office Supreme Court, U. S.
FILED.
JAN 16 1908
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. [redacted] 198.

THE LAUREL OIL & GAS COMPANY, APPELLANT,

v.

ROBERT W. MORRISON ET AL.

MOTION TO ADVANCE.

JOHN J. SHEA,
WM. J. BREENE,
FRANK B. CROSTHWAITE,
Attorneys for Appellees.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 493.

THE LAUREL OIL & GAS COMPANY, APPELLANT,

v.

ROBERT W. MORRISON ET AL.

MOTION TO ADVANCE.

Come now the appellees, Robert W. Morrison *et al.*, and respectfully move the court to advance the hearing in this cause and set the same down for a date as early as is consistent with the business of this court, and for grounds therefor state:

First. That the land in controversy in this action is eighty (80) acres of oil land in the Creek Nation, Indian Territory; that there is already drilled adjacent to said land and one hundred fifty (150) feet from the line thereof five (5) oil wells which are now producing and marketing oil, and at a distance of two hundred (200) feet from said land two (2) oil wells which are producing oil; that the wells adjacent to said land and drilled along the line of the same are rapidly draining this property and are rapidly depreciating the value of the same, and that unless this matter is

advanced and heard at an early date said land will be worthless for oil purposes.

Second. That attached hereto is a map showing the location of the wells adjacent to this land, and an affidavit of Frank M. Breene, one of the appellees herein, as to the correctness of the same and as to the probable result of the drainage upon said land as an oil property.

Third. That the Court of Appeals for the Eighth Circuit held in this cause that the courts alone had jurisdiction of the leasing for oil and gas purposes of the lands and allotments of minors in the Indian Territory; that the Department of the Interior, disregarding this statement of law, still maintains that it has and exercises control over the leases of minor lands for oil and gas purposes and is still exercising and asserting its authority over minors' lands which are being leased for oil and gas and which are being operated for oil and gas purposes in the Indian Territory; that the Department of the Interior declines to recognize the exclusive jurisdiction of the courts and still claims the right to approve and disapprove leases on minor lands, and still claims and exercises the same jurisdiction over minor lands that it had and claimed prior to the decision of the Court of Appeals; that the Court of Appeals of the Eighth Circuit in deciding this cause uses the following language, which is quoted and made a part of this motion:

"The regulation of the Interior Department is effective so far as it is sustained by the acts of Congress and is ineffectual so far as it is in conflict with them. In the light of the legislation to which reference has now been made, there are two conclusive answers to the argument that the order avoiding the sale and the lease to the appellants was not a final order. In the first place the acts of April 28, 1904, and April 26, 1906, conferred 'full and complete jurisdiction' of the guardianship of minors, whether Indians, freedmen, or otherwise, and of the rental or lease of their allot-

ments upon the trial courts of the Indian Territory and the later act repealed all acts and parts of acts inconsistent herewith. The provisions of the act of June 30, 1902, that leases for mineral purposes might not be made without the approval of the Secretary of the Interior, is inconsistent with the grants of these later acts. There can be no full and complete jurisdiction of the guardianship of minor Indians and of the leasing of their allotments in a court whose judgments are reviewable and reversible by an officer of another department of the Government. Leases of allotments of Indian minors approved by the trial courts of the Indian Territory after April 26, 1906, were therefore not subject to approval or disapproval by the Secretary of the Interior. Those courts had full and complete jurisdiction to sell the leases and to finally approve and confirm the sales and the leases. The lease to the appellants is in this category. It was approved and the sale of it was confirmed on June 11, 1906, and the order which approved it was therefore a final order."

That, by reason of the conflict in jurisdiction between the courts and the Department of the Interior, the questions involved in this cause are of great public importance and ought to be heard and determined at the earliest possible date.

Therefore the appellees herein move this court to advance said cause, to set the same down at an early date for hearing, and enter a rule or order directing the appellants to file their argument and briefs herein, and that the appellees be required to answer the same within a time fixed by this court.

JOHN J. SHEA,
WM. J. BREENE,
FRANK B. CROSTHWAITE,
Attorneys for Appellees.

Affidavit.

STATE OF OKLAHOMA,
Washington County, ss:

Frank M. Breene, being first duly sworn, on his oath states that he is one of the parties to this action and one of the parties to the lease from Monday Durant, guardian of Edith Durant, to Robert W. Morrison *et al.;* that he is experienced in the oil business and has been engaged in drilling for oil and producing oil for the past twenty (20) years.

That in his judgment, and based upon his experience in the oil business, the lands of Edith Durant, in section three (3), township seventeen (17), range twelve (12), in the Creek Nation, Indian Territory, are being rapidly drained of oil by the wells drilled upon the lines adjacent thereto, and that unless the said lands of Edith Durant shall be drilled within a brief time that the value of the same as an oil property will be greatly depreciated and said property will be damaged in a very great amount; that the measure of damages to the property is uncertain and hard to determine, and that the Durant property should be drilled and its lines protected for the benefit of the lessor and the lessee.

That the lease adjoining this lease on the south is owned by the Laurel Oil and Gas Company, and said company is developing said lease and has several wells near the south line of the Edith Durant land, and by reason of operating said wells along said line said company is draining the oil from under this tract of land and rapidly depreciating the value of this land as an oil property, and for said reason said company is not interested in an early hearing of this cause.

That the map attached hereto and marked Exhibit "A" shows approximately the development adjacent to said property and is approximately correct.

FRANK M. BREENE.

Subscribed and sworn to before me this 7th day of December, 1907. MARGUERITE STEVENSON,
[SEAL.] *Notary Public.*

My commission expires November 1, 1910.

N

*Oil well. 150 ft.

*Oil well. 150 ft.

*Oil well. 150 ft.

*Oil well. 150 ft.

EDITH DURANT.

3-17-12.

200 ft. *Oil well.

200 ft. *Oil well.

150 ft. *Oil well.

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LAUREL OIL AND GAS COMPANY *v.* MORRISON.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 198. Argued October 14, 1908.—Decided February 23, 1909.

Where a statute provides for an appeal or a writ of error to a specific court it must be regarded as a repeal of any previous statute providing for an appeal or a writ of error to another court. *Brown* v. *United States*, 171 U. S. 631.

Decisions of the Court of Appeals of the United States for the Indian Territory are final except as made subject to review by some express statutory provision.

The provisions in § 12 of the act of March 3, 1905, c. 1479, 33 Stat. 1081, for appeals and writs of error from the United States courts in Indian

Territory to the United States Court of Appeals in the Indian Territory, and from that court to the United States Circuit Court of Appeals for the Eighth Circuit are exclusive; and there is now no appeal or writ of error in such cases from the Circuit Court of Appeals of the Eighth Circuit to this court.

Appeal from 154 Fed. Rep. 617, dismissed.

THIS case on the merits is reported in *sub nomine Morrison* v. *Burnette*, 154 Fed. Rep. 617. The able opinion of Sanborn, J., speaking for the Circuit Court of Appeals, is preceded by the following statement, which correctly sets forth the facts:

"Pursuant to an order of the United States Court in the Western District of Indian Territory, which has the jurisdiction of a Probate Court, a lease of 160 acres of mineral land which had been allotted to Edith Durant, a minor Indian, was advertised for sale on sealed bids by Monday Durant, her guardian, and on the day of sale, March 5, 1906, the highest bonus bid for it was $3,490, and this bid was made by Robert W. Morrison, Charles W. S. Cobb, John E. McKinney, William J. Breene and Frank M. Breene, who are now the appellants in this case, and will hereafter be so styled. The Laurel Oil & Gas Company, a corporation, one of the appellees, bid at the same time at this sale $2,850 for this lease. On March 7, 1906, the appellants deposited the $3,490 with the court, and on March 9, 1906, the guardian executed the lease of the land to the appellants and they applied to the court for the confirmation of the sale and the approval of the lease. After notice to all parties in interest and a hearing the court on June 11, 1906, 'ordered, adjudged and decreed that the lease executed by Monday Durant, guardian of Edith Durant, minor, on the ninth day of March, 1906, (to the appellants,) be, and the same is hereby in all things approved, ratified and confirmed.' On the next day the Laurel Company, the unsuccessful bidder at the former sale, made a motion for leave to bid again for the lease of this land, and offered to bid a bonus of $8,000. Thereupon the court set aside the order of June 11, 1906, for the sole reason that a higher bonus could be obtained, and on June 14,

1906, it sold a lease of 80 acres of this land on the same terms as the former to the Galbraith Oil & Gas Company for a bonus of $16,800 and a lease of the other eighty acres on the same terms to the Laurel Oil & Gas Company for $2,000. The leases to these parties were subsequently made by the guardian and the court confirmed these sales and approved these leases. The appellants then sued out a writ of error from the Court of Appeals of the Indian Territory to reverse the order which set aside the decree of confirmation of the sale and of approval of the lease to them, and they also appealed from that order. The Court of Appeals of the Indian Territory consolidated the two cases, heard them as an appeal in equity and affirmed the order below because the court was evenly divided in opinion. The appellants have brought the latter judgment here by writ of error and also by appeal.

"Since the case came to this court the controversy over the eighty acres leased to the Galbraith Oil & Gas Company has been settled and the only dispute remaining relates to the eighty acres leased to the Laurel Oil & Gas Company under the second lease."

The question in the case was whether a court of equity during the term at which the confirmation is made may lawfully avoid an executed judicial sale which it has confirmed, on the sole ground that a larger price may be obtained by a second sale, and was answered in the negative, and the decree was that the decree of the United States Court of Appeals in the Indian Territory and the decree of the United States court for the Western District of the Indian Territory be reversed, and that "this cause be, and the same is hereby, remanded to the United States Court for the Western District of the Indian Territory, with directions to confirm and enforce its order and decree which confirmed the sale and approved the lease to the appellants [appellees here], and to take any further proceedings necessary to that end." This decree was made and entered July 10, 1907. An appeal was thereupon allowed to this court, where the record was filed October 31 of that year.

Mr. George A. Murphey, with whom *Mr. William T. Hutchings* and *Mr. Wm. P. Z. German* were on the brief, for appellant.

Mr. William J. Breene and *Mr. John J. Shea*, with whom *Mr. Edmond C. Breene* was on the brief, for appellees.

MR. CHIEF JUSTICE FULLER, after making the foregoing statement, delivered the opinion of the court.

By the act of Congress, approved March 1, 1889, c. 333, 25 Stat. 783, there was established a United States court for the Indian Territory. The act conferred no jurisdiction over felonies, but by the fifth section exclusive original jurisdiction was conferred over all offenses against the laws of the United States committed within the Indian Territory, not punishable by death or by imprisonment at hard labor. Jurisdiction was conferred in all civil cases between citizens of the United States who are residents of the Indian Territory where the value of the thing in controversy amounted to one hundred dollars or more. The final judgment or decree of the court, where the value of the matter in dispute, exclusive of costs, exceeded one thousand dollars, might be reviewed and reversed or affirmed in the Supreme Court of the United States upon writ of error or appeal, in the same manner and under the same regulations as the final judgments and decrees of a Circuit Court.

By section five of the Judiciary Act of March 3, 1891, c. 517, 26 Stat. 826, as amended, appeals or writs of error might be taken from the District and Circuit Courts directly to this court in cases in which the jurisdiction of the court was in issue; of conviction of a capital crime; involving the construction or application of the Constitution of the United States; and in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, was drawn in question.

By section six, the Circuit Courts of Appeals established by the act were invested with appellate jurisdiction in all other cases.

The thirteenth section read: "Appeals and writs of error may be taken and prosecuted from the decisions of the United States Court in the Indian Territory to the Supreme Court of the United States, or to the Circuit Court of Appeals in the Eighth Circuit, in the same manner and under the same regulations as from the Circuit or District Courts of the United States, under this act."

The act of March 1, 1895, c. 145, 28 Stat. 693, provided for the appointment of additional judges of the United States court in the Indian Territory, and created a Court of Appeals with such superintending control over the courts in the Indian Territory as the Supreme Court of Arkansas possessed over the courts of that State by the laws thereof; and the act also provided, § 11, that "writs of error and appeals from the final decisions of said appellate court shall be allowed, and may be taken to the Circuit Court of Appeals for the Eighth Judicial Circuit in the same manner and under the same regulations as appeals are taken from the Circuit Courts of the United States," which thus in terms deprived that court of jurisdiction of appeals from the Indian Territory trial court, under § 13 of the act of 1891.

In *Harless* v. *United States*, 88 Fed. Rep. 97, the Circuit Court of Appeals for the Eighth Circuit, in a careful opinion by District Judge Shiras, held that in the act of March 1, 1895, creating the Court of Appeals for the Indian Territory and giving it full jurisdiction, civil and criminal, the provision of § 11, that "writs of error and appeals from the final decisions of said appellate court shall be allowed and may be taken to the Circuit Court of Appeals for the Eighth Judicial Circuit in the same manner and under the same regulations as appeals are taken from the Circuit Courts of the United States," conferred upon that court full appellate jurisdiction over the final decisions of the territorial appellate court, which jurisdiction was not in any way measured or limited by the jurisdiction on ap-

peal from or error to the District or Circuit Courts. And we concur in that view.

The rule was laid down by this court in *Brown* v. *United States*, 171 U. S. 631, that where a statute provides for a writ of error to a specific court of appeals it must be regarded as a repeal of any previous statute which provided for a writ of error to another and different court, and that the decisions of the Court of Appeals of the United States for the Indian Territory are final, except so far as they are made subject to review by some express provision of law. It was furthermore there ruled that the Court of Appeals in the Indian Territory was analogous to the Supreme Court of the District of Columbia, and bore the same relation to the trial court in the Indian Territory as the Supreme Court of the District of Columbia bore to the trial court in the District, and *Ex parte Bigelow*, 113 U. S. 328; *In re Heath*, 144 U. S. 92; *Cross* v. *Burke*, 146 U. S. 82, 84, were cited to the point that no appeal could be taken from or writ of error sued out to the Supreme Court of the District of Columbia where not specifically provided for.

Section 12 of the act of March 3, 1905, 33 Stat. 1081, c. 1479, in force when the proceedings in the present case were had, provides:

"That hereafter all appeals and writs of error shall be taken from the United States courts in the Indian Territory to the United States Court of Appeals in the Indian Territory, and from the United States Court of Appeals in the Indian Territory to the United States Circuit Court of Appeals for the Eighth Circuit in the same manner as is now provided for in cases taken by appeal or writ of error from the Circuit Courts of the United States to the Circuit Court of Appeals of the United States for the Eighth Circuit."

We find no statute giving an appeal from that Circuit Court of Appeals to this court, and perceive no reason for concluding that Congress intended that parties in such cases should be entitled to three appeals.

Appeal dismissed.